

(23,111)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 1035.

CLARENCE S. HOUGHTON, AS RECEIVER IN BANK-
RUPTCY OF THE ASSETS AND EFFECTS OF ABRAM
L. CANFIELD, BANKRUPT, APPELLANT,

vs.

WILLIAM H. BURDEN.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

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Petition.

United States District Court,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

ABRAM L. CANFIELD, an alleged
Bankrupt.

2

TO THE HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF NEW YORK.

The petition of WILLIAM H. BURDEN respectfully
shows to the Court as follows:

That on the 18th day of January, 1911, a pe-
tition for involuntary bankruptcy was filed in this
Court against Abram L. Canfield, and by an order
of this Court made on the same day, Clarence S.
Houghton was appointed receiver for such al-
leged bankrupt, and said Houghton thereafter duly
qualified as such receiver and entered upon his
duties as such.

3

That prior to the filing of said petition in bank-
ruptcy, and on the 5th and 13th days of January,
1911, respectively, the said Canfield duly assigned
and transferred to your petitioner, the accounts

- 4 receivable set forth in the schedules hereunto annexed, marked Schedules A and B; and at the time of said assignments, your petitioners paid to said Canfield in cash the sums of \$5,000 and \$5,628.60, respectively; and said assignments were received and said sums paid by your petitioner in good faith, and without any knowledge or notice that the said Canfield was insolvent or in failing circumstances.

- That, as your petitioner is informed and believes, the said receiver has collected on the accounts above mentioned from the persons owing the same, various sums amounting in the aggregate to more than One thousand dollars, all of which money is the property of your petitioner.

5 That annexed hereto and marked Exhibit C is a copy of the agreement under which said assignments were made.

WHEREFORE, your petitioner prays for an order directing said receiver to pay over to your petitioner the moneys heretofore received by him on said accounts, and also directing that if any further sums shall be received by him from said debtors, he shall pay the same over to your petitioner forthwith.

- 6 Dated, New York, January 26th, 1911.

WILLIAM H. BURDEN,
Petitioner.

BRUSH & CRAWFORD,
Attorneys for Petitioner,
No. 30 Broad Street,
Borough of Manhattan,
New York City.

SOUTHERN DISTRICT OF NEW YORK, }
State of New York, } ss.:
 County of New York, }

7

WILLIAM H. BURDEN, being duly sworn, says that he is the petitioner above named; that the foregoing petition is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

WILLIAM H. BURDEN.

Sworn to before me this }
 26th day of January, 1911. }

8

HENRY J. UDERITZ,
 Notary Public,

(SEAL) Kings Co.,
 Certificate filed in N. Y. Co.

9

Schedule "A".

		<u>Due.</u>	<u>Amount.</u>
	Burger's Furn. Stores, Glens Falls, N. Y.	4/1	\$316.21
	L. Bauman & Co., 8th Ave.	4/1	139.50
	Balfour Williamson Co., City....	4/1	25.40
	Geo. Behn Co., Baltimore, Md....	4/1	64.60
	C. Ludwig Bauman Co., Broadway Bklyn.	4/1	69.00
	Frank Cordts Furn. Co., Hoboken, N. J.	4/1	24.00
11	Cowperthwait & Sons, 121st St., City.	4/1	55.60
	Cowperthwait & Co., Park Row, City.	4/1	128.35
	Day & Holt Co., Catskill, N. Y....	4/1	13.50
	Force & Wyckoff, Keyport, N. J..	4/1	23.73
	John F. Fairsnyder, Nyack, N. Y.	4/1	27.95
	J. Glickman, Corona, L. I.	4/1	21.00
	J. W. Greene, Jersey City, N. J..	4/1	160.50
	Gimbel Brothers, City.	4/1	62.60
	E. A. Kirch & Co., Newark, N. J..	4/1	556.40
	L. Lauterstein, 91 9th Ave., City...	4/1	22.50
12	H. S. Landsman & Son, Danbury, Conn.	4/1	236.82
	A. D. Matthews & Son, Brooklyn..	4/1	364.04
	Michaels Brothers, 5th Ave., 9th St.	4/1	60.25
	Miron & Lifson, Elizabethport, N. J.	4/1	52.50
	H. Messersmith, Buffalo, N. Y....	4/1	358.35
	S. Margolies, 1596 Fulton St., Bklyn.	4/1	56.30
	Main Furn. Co., Paterson, N. J..	4/1	146.55
	Marcus Miller, Jamaica, L. I.	4/1	86.11
	Miller & Hyams, Brooklyn, N. Y...	4/1	50.50

Henry Pommers, Albany, N. Y....	4/1	107.75	13
A. H. Pickens, Newburgh, N. Y....	4/1	61.25	
Russell & Palmer, Batavia, N. Y..	4/1	130.00	
Chas. F. Schick, Poughkeepsie,			
N. Y.	4/1	260.46	
R. J. Stransky, Buffalo, N. Y....	4/1	139.40	
Siegel Cooper Co., City.....	4/1	57.56	
Strong & Trowbridge Co., 17 State			
St.	4/1	180.00	
J. Samuels & Brother, Providence,			
R. I.	4/1	141.19	
Slawson Woodruff & Cowan, White			
Plains.	4/1	210.15	14
M. F. Tallmage, Buffalo, N. Y....	4/1	156.75	
Tieje & Christ, Hoboken, N. J....	4/1	31.00	
F. E. Talbot, Philmont, N. Y....	4/1	28.05	
A. M. Towneley & Co., Long			
Branch, N. J.....	4/1	30.40	
H. Thomas & Sons, Glens Falls,			
N. Y.....	4/1	41.00	
H. G. Vail & Co., Oyster Bay, L. I.	4/1	74.40	
White Van Glahn & Co., City....	4/1	1286.75	
S. W. Williamson, Williamsbridge,			
N. Y.	4/1	86.50	
J. M. Wolf Co., Brooklyn, N. Y... 4/1		167.74	
Andrew Will, Hastings-on-Hudson,			15
N. Y.	4/1	15.25	
B. Zumsky, Jersey City, N. J....	4/1	43.50	
Jos. E. Zent, Buffalo, N. Y.....	4/1	404.95	

\$6,776.31

Schedule "B".

		Due.	Amount.
	S. Allen, Haverstraw, N. Y.....	4/1	\$51.65
	J. Armbrust & Son, Buffalo, N. Y. 4/1		33.75
	H. M. Ash, Paterson, N. J.....	4/1	184.45
	Bamer & McDowell, Albany, N. Y. 4/1		27.00
	C. E. Barbour & Co., Philadelphia, Pa.	4/1	113.25
	Bauman & Froelich Co., Newark, N. J.	4/1	46.26
	Benz & Son, Oswego, N. Y.....	4/1	89.00
17	J. W. Bergman, Chester, N. J....	4/1	34.50
	J. W. Bliss, 892 Manhattan Ave., Bklyn.	4/1	28.85
	J. Francis Brown, Thompsonville, Conn.	4/1	31.15
	Burger's Furn. Stores, Glens Falls, N. Y.	4/1	316.21
	F. B. Callister, Rochester, N. Y... 4/1		63.10
	H. V. Carman, Hempstead, L. I... 4/1		154.60
	Central Gas Appliance Co., Phila- delphia, Pa.	4/1	101.50
	Consolidated Gas Co., 4 Irving Place, City.	4/1	158.10
18	Cowperthwait Van Horn & Co., Newark, N. J.	4/1	310.75
	Danbury Hdw. Co., Danbury Ct... 4/1		236.67
	Dorsen & Co., Providence, R. I.... 4/1		277.50
	Eagle Specialty Co., Jersey City, N. J.	4/1	64.75
	Ph. Feldman & Son, Brooklyn.... 4/1		172.25
	Fish & Freinhar, Newburgh, N. Y. 4/1		84.80
	I. Fleishman, Syracuse, N. Y..... 4/1		127.88
	B. J. Fryatt, East Rochester, N. Y. 4/1		74.00
	Gately Furn. Co., Hornell, N. Y... 4/1		61.00
	Gimbel Brothers, City.....	4/1	62.60

Graff Furnace Co., City.....	4/1	265.10	19
Grand Italian Furn. Co., Navy St. Bklyn.	4/1	34.60	
Wm. Hickox, Lawrence, L. I....	4/1	52.09	
J. Holdstein, New Brunswick, N. J.	4/1	126.07	
Isthmian Canal Commission, Washington, D. C.....	4/1	998.95	
Jamaica Furn. Co., Jamaica, L. I.	4/1	106.67	
Johnstown Hdw. Co., Newburgh, N. Y.	4/1	48.12	
Kelly & McLinden, Perth Amboy, N. J.	4/1	81.75	
E. A. Kirch & Co., Newark, N. J...	4/1	84.16	20
J. Kurtz & Son, Brooklyn, N. Y...	4/1	33.55	
L. Laufer, Buffalo, N. Y.....	4/1	69.00	
Laufer & Zolte, Buffalo, N. Y....	4/1	42.00	
Le Van Brothers, Medina, N. Y...	4/1	46.00	
Fred'k Loeser & Co., Brooklyn...	4/1	58.80	
McKinney & Co., Binghamton, N. Y.	4/1	55.70	
W. F. Metzger, Herkimer, N. Y...	4/1	112.24	
Plainfield Furn. Co., Plainfield N. J.	4/1	35.25	
F. Potter, Patchogue, L. I.....	4/1	158.80	
H. Riskin, Passaic, N. J.....	4/1	50.25	
G. W. Robinson, Sayville, L. I....	4/1	29.75	21
Rockwell & Hammonds, Horse- heads, N. Y.....	4/1	40.00	
H. W. Roder & Co., Newark, N. J.	4/1	121.80	
J. R. Rose & Co., Hornell, N. Y...	4/1	106.35	
Rose & Co., City.....	4/1	545.67	
Schneeter & Abrams, City.....	4/1	52.50	
A. Schlessinger, Newark, N. J....	4/1	146.00	
Smith Hdw. Co., Oswego, N. Y....	4/1	57.00	
M. Steierman, Jersey City, N. J...	4/1	103.00	
M. Strauss, Bay Shore, L. I.....	4/1	90.04	
Sweet & Packard, Troy, N. Y....	4/1	62.07	

22	Tietje & Christ, Hoboken, N. J. . . . 4/1	56.25
	W. H. Van Buren, Watertown, N. Y. 4/1	68.00
	White Van Glahn & Co., City. . . . 4/1	370.90
	Wm. F. Wild, Lindenhurst, L. I. . . 4/1	115.80
	J. M. Wolf, Brooklyn, N. Y. 4/1	56.75
	Woods, Waters & Co., 23rd St., City. 4/1	49.90
	Haug & Fletcher, Elizabeth, N. J. 4/1	43.80
	F. M. Groendyke, Mendham, N. J. 4/1	34.58
		<hr/>
		\$7,514.83

23

Schedule "C".

THIS AGREEMENT, made this 14th day of December, 1910, between ABRAM L. CANFIELD, of the Borough of Manhattan, City of New York, party of the first part, and WILLIAM H. BURDEN, of the same place, party of the second part,

WITNESSETH:

That in consideration of the premises and the mutual covenants and agreements hereinafter mentioned, and of the sum of One Dollar paid by
 24 the party of the second part to the party of the first part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the parties hereto have agreed as follows, viz:

I.—The party of the first part shall assign and transfer to the party of the second part approved accounts due from reputable debtors, and the party of the second part shall pay therefor a sum equal to seventy-five per cent of the total amount thereof, not to exceed however Ten thousand dol-

lars, unless he shall elect to advance a larger sum. 25

II.—The said accounts shall be for goods sold and delivered in good faith to the respective persons against whom the accounts exist, and in all cases, the said goods shall have been accepted by such persons.

III.—All accounts assigned under this agreement shall result from the sale of goods shipped either from the place of business of the party of the first part in the City of New York, or from one of the following factories: 26

Walker & Pratt Mfg. Co., Boston, Mass.
 American Stove Co., Cleveland, Ohio.
 Excelsior Stove & Mfg. Co., Quincy, Ill.
 Cleveland Co-Operative Stove Co., Cleveland, Ohio.
 Victor Stove Co., Salem, Ohio.
 Liberty Stove Co., Philadelphia, Pa.
 Belding-Hall Co., Belding, Mich.
 Metal Stamping Co., Jackson, Mich.
 Novelty Mfg. Co., Jackson, Mich.
 W. M. Crane Co., New York City.

IV.—Where the goods sold shall be shipped from the place of business of the party of the first part, the original shipping receipts covering the shipment referred to in the account shall be submitted to the party of the second part for his inspection at the time of the assignment of the account, and where the goods shall be shipped from one of the factories aforesaid, the invoice sent by the said factory to the party of the first part shall be submitted in like manner. 27

- 28 V.—The party of the first part shall act as the agent of the party of the second part in collecting the said accounts, but as remittances shall be received therefor, the checks and drafts shall be immediately delivered to the party of the second part, so indorsed as to make them payable to him.

- 29 VI.—The party of the first part hereby guarantees that each account so to be assigned will be paid within ten days after the same shall become due, and if any such accounts shall not be so paid, the party of the first part shall pay to the party of the second part the full amount thereof, after ten days notice in writing, and thereupon the party of the second part shall re-assign the same to the party of the first part; and if the party of the first part shall fail to so pay the amount of any such unpaid account, the party of the second part, at his election, may revoke the agency of the party of the first part to collect any of said accounts then uncollected.

- 30 VII.—The party of the second part shall be entitled to compensation for the labor and services to be performed, and time to be expended, by him in making the examinations required by the terms of the bond executed by the Fidelity and Casualty Company of New York, and delivered simultaneously herewith, which compensation is to be measured by computing one per cent per month upon whatever part of the advance shall remain uncollected on the said accounts, and for the period that the same shall remain so uncollected.

VIII.—Until all said accounts shall have been collected or re-assigned, the party of the second part shall have the right to examine at all reasonable times, the books of accounts and vouchers of

the party of the first part, which examination may be made either personally or by his duly authorized agent. 31

IX.—When the amount collected on said accounts and turned over to the party of the second part shall amount to the total sum advanced thereon, with interest at the rate of six per cent. per annum, and the party of the second part shall have received out of said collections his compensation for services as above mentioned, and all disbursements made or liabilities incurred, for exchange, or for attorneys' fees, or other expenses in and about the collection of said accounts, he shall re-assign to the party of the first part all accounts then uncollected. 32

X.—Until the termination of this contract by mutual consent, all further purchases of accounts by the party of the second part from the party of the first part shall be subject to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

In presence of

G. HESS,

ABRAM L. CANFIELD. (L.S.)

ARTHUR J. KOEHLER.

for WILLIAM H. BURDEN.

WM. H. BURDEN (L. S.)

The list of factories contained in paragraph numbered III hereof is hereby amended by the addition of the following 5 names:

Toledo Stove & Range Co., Toledo, Ohio.

March Brounback Co., Pottstown, Pa.

- 34 Roberts & Mander Stove Co., Philadelphia, Pa.
 E. H. Huenefeld Co., Cincinnati, O.
 Century Mfg. Co., Johnstown, Pa.
 New York, December 16, 1910.

ABRAM L. CANFIELD.

WM. H. BURDEN.

- (Endorsed:)—No. 14582—United States District Court, Southern District of New York.—In the Matter of Abram L. Canfield, Alleged Bankrupt.—Petition and Notice of Motion.—Brush & Crawford, Attorneys for Petitioner, 30 Broad Street, Borough of Manhattan, New York City.
- 35 —Service of a copy of within Petition and Notice of Motion is Admitted this 26th day of January, 1911.—C. S. Houghton, Receiver.—Engel Brothers, Attorneys for Receiver.—Jany. 30th, 1911.—Referred to Referee as Special Master for Examination, Testimony and Report. G. C. H. J.—U. S. District Court, S. D. of N. Y.—Filed Jan. 30, 1911.

Affidavit in Opposition to Motion.

37

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

ABRAM L. CANFIELD, alleged
Bankrupt.

38

Southern District of New York, ss.:

CLARENCE S. HOUGHTON, being duly sworn, deposes and says that he is the receiver appointed herein and that he has duly qualified as such.

That at the time of taking possession of the place of business of the bankrupt at No. 97 Beekman Street, one William H. Burden was on the premises and claimed to hold assignments of a number of account.

That the said Burden informed deponent that he had advanced to the alleged bankrupt the sum of \$10,628 for which the said bankrupt had assigned the accounts of said Burden as collateral security.

39

Deponent further says that he has made a cursory examination through his attorneys of the facts set forth in the petition of William H. Burden, which petition is dated and verified the 26th day of January 1911. That deponent has been unable to discover entries in the cash book or bank pass book of the bankrupt showing the receipt of \$10,628 from the said William H. Burden; on the contrary your deponent calls the attention of this Court to the facts that the bank pass books of the bankrupt show a deposit of about \$8,500 in the

- 40 month of January and taking into consideration the large amount of business done by the bankrupt and the large amount collected on the outstanding accounts, deponent alleges that there is reason to doubt that the said William H. Burden actually advanced the sum mentioned in his petition on the 5th and 13th day of January, 1911.

Deponent has arranged to conduct an examination of the alleged bankrupt under Section 21A which is scheduled for Wednesday the 1st of February and deponent would also like to examine the petitioner, William H. Burden, and see his checks which he claimed he gave to the alleged bankrupt for the assignment of these accounts.

- 41 Deponent therefore suggests that the motion of this petitioner be denied at this time or else adjourned until the election of a Trustee.

In the meantime deponent is willing to keep a separate account of the moneys coming in on the accounts alleged to have been assigned to the said William H. Burden.

CLARENCE S. HOUGHTON.

Subscribed and sworn to before me/
this 28th day of January, 1911. }

JACOB JNO. LAZARO,
Comm. of Deeds,
N. Y. City.

- (Endorsed:)—No. 14582.—U. S. District Court.
—In the Matter of Abram L. Canfield, Alleged
42 Bankrupt.—Affidavit in Opposition.—Engel
Brothers, Attorneys for Receiver, 132 Nassau
Street, Manhattan, New York City.—U. S. Dis-
trict Court, S. D. of N. Y.—Filed Jan. 30, 1911.

Report of Special Master.

43

UNITED STATES DISTRICT COURT,**SOUTHERN DISTRICT OF NEW YORK.****IN THE MATTER***of***ABRAM L. CANFIELD,
Bankrupt.**

44

To the Judges of the United States District Court,
for the Southern District of New York.

On January 30, 1911, one William H. Burden
filed with the Court his verified petition herein
in the following words:

"UNITED STATES DISTRICT COURT,**SOUTHERN DISTRICT OF NEW YORK.****IN THE MATTER***of***ABRAM L. CANFIELD,
An Alleged Bankrupt.**

45

To the Honorable Judges of the United States
District Court for the Southern District of
New York.

The petition of William H. Burden respectfully
shows to the Court as follows:

- 46 That on the 18th day of January, 1911, a petition for involuntary bankruptcy was filed in this Court against Abram L. Canfield, and by an order of this court made on the same day, Clarence S. Houghton was appointed receiver for such alleged bankrupt, and said Houghton thereafter duly qualified as such receiver and entered upon his duties as such.

- That prior to the filing of said petition in bankruptcy, and on the 5th and 13th days of January, 1911, respectively, the said Canfield duly assigned and transferred to your petitioner, the accounts receivable set forth in the schedules hereto annexed, marked Schedules A and B, and at the time of said assignments, your petitioner paid to said Canfield in cash the sums of \$5000 and \$5628.60, respectively; and said assignments were received and said sums paid by your petitioner in good faith, and without any knowledge or notice that the said Canfield was insolvent or in failing circumstances.
- 47

That, as your petitioner is informed and believes the said receiver has collected on the accounts above mentioned from the persons owing the same, various sums amounting in the aggregate to more than One thousand dollars, all of which money is the property of your petitioner.

That annexed hereto and marked Exhibit C and is a copy of the agreement under which said assignments were made.

- 48 WHEREFORE, your petitioner prays for an order directing said receiver to pay over to your petitioner the moneys heretofore received by him on said accounts, and also directing that if any further sums shall be received by him from said debtors, he shall pay the same over to your petitioner forthwith.

Dated, New York, January 26th, 1911.

WILLIAM H. BURDEN,
Petitioner."

Thereafter Clarence S. Houghton, the Receiver
herein, filed his affidavit in opposition to said pe-
tition, which affidavit was as follows: 49

“UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

<p>In the Matter</p> <p>of</p> <p>ABRAM L. CANFIELD, alleged Bankrupt.</p>	}	
--	---	--

50

Southern District of New York, ss.:

CLARENCE S. HOUGHTON, being duly sworn, deposes and says that he is the receiver appointed herein and that he has duly qualified as such.

That at the time of taking possession of the place of business of the bankrupt at No. 97 Beekman Street, one William H. Burden was on the premises and claimed to hold assignments of a number of account.

That the said Burden informed deponent that he had advanced to the alleged bankrupt the sum of \$10,628 for which the said bankrupt had assigned the accounts to said Burden as collateral security. 51

Deponent further says that he has made a cursory examination through his attorneys of the facts set forth in the petition of William H. Burden, which petition is dated and verified the 26th day of January 1911. That deponent has been unable to discover entries in the cash book or bank pass book of the bankrupt showing the receipt of \$10,628 from the said William H. Burden; on the contrary your deponent calls the attention of this Court to the facts that the bank pass books of the bankrupt show a deposit of about \$8,500 in the

52 month of January and taking into consideration the large amount of business done by the bankrupt and the large amount collected on the outstanding accounts, deponent alleges that there is reason to doubt that the said William H. Burden actually advanced the sum mentioned in his petition on the 5th and 13th day of January, 1911.

Deponent has arranged to conduct an examination of the alleged bankrupt under Section 21A which is scheduled for Wednesday the 1st of February and deponent would also like to examine the petitioner, William H. Burden, and see his checks which he claimed he gave to the alleged bankrupt for the assignment of these accounts.

53 Deponent therefore suggests that the motion of this petitioner be denied at this time or else adjourned until the election of a Trustee.

In the meantime deponent is willing to keep a separate account of the moneys coming in on the accounts alleged to have been assigned to the said William H. Burden.

CLARENCE S. HOUGHTON.

Subscribed and sworn to before me/
this 28th day of January, 1911.

JACOB JACO. LAZARO,
Comm. of Deeds,
New York City."

54 Said matter having been thereupon referred to me for examination, testimony and report, I do hereby report as follows:

I proceeded with a hearing of said matter and was attended thereon by Mr. John J. Crawford, attorney for said William H. Burden, the petitioner in question, and by Messrs. Engel Brothers, attorneys for said Receiver.

Proofs were made in regard to the matter in question, and the minutes of such proceeding are submitted herein.

The following appears by the proofs:

The petition in bankruptcy was filed herein on January 18, 1911.

Shortly prior thereto, and on December 14, 1910, Abram L. Canfield, the bankrupt herein, and said William H. Burden made and entered into an agreement in writing, as follows: 55

"THIS AGREEMENT, made this 14th day of December, 1910, between Abram L. Canfield, of the Borough of Manhattan, City of New York, party of the first part, and William H. Burden, of the same place, party of the second part, Witnesseth:

That in consideration of the premises and the mutual covenants and agreements herein-after mentioned, and of the sum of One Dollar paid by the party of the second part to the party of the first part at and before the en- 56
sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the parties hereto have agreed as follows, viz.:

I.—The party of the first part shall assign and transfer to the party of the second part approved accounts due from reputable debtors, and the party of the second part shall pay therefor a sum equal to seventy-five per cent of the total amount thereof, not to exceed however Ten thousand Dollars, unless he shall elect to advance a larger sum.

II.—The said accounts shall be for goods sold and delivered in good faith to the respective persons against whom the accounts exist, and in all cases, the said goods shall have 57
been accepted by such persons.

III.—All accounts assigned under this agreement shall result from the sale of goods shipped either from the place of business of the party of the first part in the City of New York, or from one of the following factories:

Walker & Pratt Mfg. Co., Boston, Mass.
American Stove Co., Cleveland, Ohio.
Excelsior Stove & Mfg. Co., Quincy, Ill.
Cleveland Co-operative Co., Cleveland,
Ohio.

Victor Stove Co., Salem, Ohio.
Liberty Stove Co., Philadelphia, Pa.
Belding-Hall Co., Belding, Mich.

58

Metal Stamping Co., Jackson, Mich.

Novelty Mfg. Co., Jackson, Mich.

W. M. Crane Co., New York City.

IV.—Where the goods sold shall be shipped from the place of business of the party of the first part, the original shipping receipts covering the shipment referred to in the account shall be submitted to the party of the second part for his inspection at the time of the assignment of the account, and where the goods shall be shipped from one of the factories aforesaid, the invoice sent by the said factory to the party of the first part shall be submitted in like manner.

59

V.—The party of the first part shall act as the agent of the party of the second part in collecting the said accounts, but as remittances shall be received therefor, the checks and drafts shall be immediately delivered to the party of the second part, so endorsed as to make them payable to him.

60

VI.—The party of the first part hereby guarantees that each account so to be assigned will be paid within ten days after the same shall become due, and if any such account shall not be so paid, the party of the first part shall pay to the party of the second part the full amount thereof, after ten days notice in writing, and thereupon the party of the second part shall re-assign the same to the party of the first part; and if the party of the first part shall fail to so pay the amount of any such unpaid account, the party of the second part, at his election, may revoke the agency of the party of the first part to collect any of said accounts then uncollected.

VII.—The party of the second part shall be entitled to compensation for the labor and services to be performed, and time to be expended, by him in making the examinations required by the terms of the bond executed by the Fidelity and Casualty Company of New York, and delivered simultaneously herewith, which compensation is to be measured by computing one per cent per month upon

whatever part of the advance shall remain uncollected on the said accounts, and for the period that the same shall remain uncollected. 61

VIII.—Until all said accounts shall have been collected or re-assigned, the party of the second part shall have the right to examine at all reasonable times, the books of accounts and vouchers of the party of the first part, which examination may be made either personally or by his duly authorized agent.

IX.—When the amount collected on said accounts and turned over to the party of the second part shall amount to the total sum advanced thereon, with interest at the rate of six per cent per annum, and the party of the second part shall have received out of said collections his compensation for services as above mentioned, and all disbursements made or liabilities incurred, for exchange, or for attorneys' fees, or other expenses, in and about the collection of said accounts, he shall re-assign to the party of the first part all accounts then uncollected. 62

X.—Until the termination of this contract by mutual consent, all further purchases of accounts by the party of the second part from the party of the first part shall be subject to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written. 63

ABRAM L. CANFIELD (L. S.)

In presence of

G. HESS.

ARTHUR J. KOEHLER,

for WILLIAM H. BURDEN.

WILLIAM H. BURDEN (L. S.)

On December 16, 1910, the following amendment was appended to said agreement:

“The list of factories contained in paragraph numbered III hereof, is hereby amended by the addition of the following 5 names:

- 64 Toledo Stove & Range Co., Toledo, Ohio.
 March Brounback Co., Pottstown, Pa.
 Roberts & Mander Stove Co., Philadel-
 phia, Pa.
 E. H. Huenefeld Co., Cincinnati, O.
 Century Mfg. Co., Johnstown, Pa.
 New York, December 16, 1910.
 ABRAM L. CANFIELD.
 WM. H. BURDEN."

- It will be observed that this agreement, while
 tending, at the commencement, to imply that the
 transfer of accounts was to be a sale, provides
 for the payment of interest on the advances, and
 65 concludes by providing for a re-assignment of
 any surplus of the accounts over such advances.

On December 15, 1910, the Fidelity & Casualty
 Co. of New York, executed and delivered a cer-
 tain bond, containing the following provisions,
 among others:

"THIS BOND WITNESSETH:

WHEREAS, Abram L. Canfield, of 97 Beek-
 man Street, New York City, hereinafter called
 the Obligee, a copy of which is attached here-
 to and made a part hereof:

- Now, THEREFORE, in consideration of a cer-
 tain premium, The Fidelity and Casualty
 Company of New York, hereinafter called the
 Company, does hereby agree that it will re-
 imburse the Obligee for the loss, not exceed-
 ing Seven thousand five hundred dollars, of
 any money or other personal property (1)
 66 through the sale, assignment, pledge, or
 transfer under the said agreement by the
 Principal to the Obligee, during the term of
 this bond, of any account wholly or partly
 fictitious; (2) through the failure of the prin-
 cipal during the term of this bond to deliver
 to the Obligee all money and other property
 received by the Principal during the said
 term on accounts sold, assigned, pledged, or
 transferred under the said agreement.

The foregoing agreement is subject to the following conditions: 67

* * * * *

"7. The Obligee shall duly observe and enforce all the provisions of the said agreement, except as such provisions may conflict with the following conditions, namely: a, The Obligee shall require the Principal to state in writing at the time of assigning each account, the date when the payment of such account is due, and if the payment of any account is not made within twenty days of the date that such payment is due, the Obligee shall immediately thereupon make demand by registered mail upon the debtor for the amount due; b, the Obligee shall require the Principal to file with the Obligee in connection with each account a certificate signed by a responsible official or employee of the Principal stating that the account referred to in the certificate represents a bona-fide sale, and that the merchandise concerned with the account has, prior to the signing of the certificate, been shipped to the customer named in the account; c, the Obligee, at least monthly, shall make an examination of the accounts of the Principal which shall embrace (1) a complete examination of the books, accounts, and vouchers of the Principal as respects the accounts covered under the said agreement; (2) a strict comparison between all unpaid accounts as such accounts appear on the records of the Obligee and as such accounts appear in the books of original entry of the Principal." 68 69

The premium upon this bond was paid by the bankrupt.

On December 16, 1910, under and in accordance with the foregoing agreement, said Burden paid to the bankrupt the sum of \$10,000 by two checks for \$5,000 each, and the bankrupt delivered to him 98 accounts, with assignments of the same to him which were absolute in terms.

70 On January 5, 1911, under and in accordance with said agreement, said Burden paid to the bankrupt the sum of \$5,000, in two checks, one for \$2,000, which was retained by the bankrupt and another for \$3,000, which was thereupon endorsed by the latter back to said Burden.

At the same time and under and in accordance with said agreement the bankrupt delivered to said Burden 46 accounts, with assignments of the same similar to the preceding.

On January 13, 1911, under and in accordance with said agreement, said Burden paid to the bankrupt the sum of \$5,628.60, by a check for said
71 amount, which was thereupon endorsed by the latter back to said Burden, and the bankrupt delivered to said Burden 63 accounts, with assignments of the same similar to the preceding.

Down to said time, the bankrupt, under and in accordance with said agreement, had collected from the 98 accounts so assigned on December 16, 1910, the sum of \$1,487.28, and paid the same over to Burden and on January 13, 1911, said Burden re-assigned to the bankrupt the balance of said 98 accounts remaining uncollected.

With respect to said checks for \$3,000 and \$5,-
72 628.60 respectively, it is shown that they were so endorsed back by the bankrupt to Burden in order to pay back to the latter the balance of the original advance of \$10,000, remaining unpaid after his receipt of the said collections, aggregating \$1,487.28.

It follows, therefore, that the total amount which Burden so advanced to the bankrupt was \$20,628.60; that of said amount the sum of \$1,487.28 was repaid to Burden by the collections in question, leaving a balance of \$19,141.32 and that the total amount repaid to Burden by the bankrupt by the endorsing back of said checks was \$8,628.60, thus

leaving a net balance unpaid to said Burden of \$10,512.72. 73

It is also shown that said check for \$5,628.60, so given and endorsed back, included the sum of \$115.88 for interest and per centage estimated to be due to said Burden under the agreement in question, upon said original loan of \$10,000.

It is contended by Burden, the petitioner herein, that such agreement, and such assignments of the accounts operated as an absolute sale of the latter to him.

In regard to such matter, Burden testifies as follows:

“Q. What distinction between an advance and a loan? A. I took them over as assigned accounts and he was to repay me the amount with six per cent, and at that time we talked about the position in the office. 74

“Q. How did the transaction differ from an ordinary loan with security? A. Differed in this way, that at that time we spoke of me taking a position in his office, which never came to pass.

“Q. Do you think that constitutes a difference? A. I was to secure a position if he had such an opening. He didn't have it.

“Q. You think because of that that the money wasn't a loan? A. A loan or an advance on his accounts; might be considered a loan. 75

“Q. You have said twice here I think it wasn't a loan; what was it if not a loan? A. It could be construed as a loan or an advance upon his accounts.

“Q. How do you distinguish between an advance and a loan? A. Perhaps it is the same thing.”

* * * * *

“Q. Were you to get one per cent of the whole ten thousand dollars in addition to the six per cent? A. I advanced him ten thousand dollars and I was to get one per cent.

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"Q. In addition to the six per cent? A. In addition to the six per cent, so long as that ten thousand dollars remained out of my possession.

"Q. At what period were you to be paid this one per cent? A. There was no stated time for that one per cent. The agreement was to be paid at the time that he reimbursed me the advance with six per cent interest and the one per cent was to be computed in for services at the time said."

Arthur J. Koehler, a money broker, who negotiated the transaction in question, testified as follows:

77

"Q. But there was some conversation between Mr. Burden and yourself and Mr. Canfield in relation to the extra one per cent? A. I told Mr. Canfield it would cost him that much money.

"Q. And were you the first one that told Mr. Canfield that? A. I was.

"Q. Now, what led up to the discussion of the 1 per cent with Mr. Canfield? A. Why, naturally, Mr. Canfield wanted to know what it was going to cost him; he paid more money on previous loans.

78

"Q. Never mind about previous loans; about this loan; what led up to your telling Mr. Canfield he would have to pay 1 per cent extra? A. What led up to the facts? I told him the conditions on which the arrangements could be made with Burden.

"Q. What were these? A. That it would cost him on \$10,000, \$1,800 a year.

"Q. Did you explain how it would cost him that? A. No, I told him that is what it would cost him."

The following statement is made herein by the attorney for Burden:

Mr. Crawford.—I offer in evidence the original list of accounts delivered by Mr.

Canfield to Mr. Burden on the 5th day of January, 1911, and headed List of Accounts this Day, January 5th, sold and assigned by A. L. Canfield to W. H. Burden, etc. 79

Mr. Crawford.—I offer in evidence the paper signed by A. L. Canfield and delivered by him to William H. Burden on January 13, 1911, and headed List of Accounts this day Sold and Assigned by A. L. Canfield to W. H. Burden, etc.

The Referee.—An absolute sale of the accounts?

Mr. Crawford.—Yes, sir, the absolute assignment of the accounts. But there was a stipulation that when the accounts were collected Mr. Canfield had an equity in the balance that might be due afterwards." 80

In view of the foregoing, and of the very contradictory terms of the agreement in such regard, as hereinabove shown, and considering all the proofs herein, I am of the opinion that it is too plain for argument that the accounts in question were not sold to Burden, but were merely pledged with him as collateral security for loans.

It is contended by the Receiver that by reason of the provision of the agreement that Burden should receive one per cent per month as compensation for certain labor and services to be performed by him, the agreement in question is usurious and therefore, wholly invalid and inoperative. 81

In connection with this matter Burden testifies that in October, 1910, he first met the bankrupt, presenting to him a card of introduction from said Koehler, the money broker; that Koehler had told him that the bankrupt "wanted to get the use of some money on his book-accounts"; that he, Burden discussed with the bankrupt "the subject of buying his sales accounts, of advancing him money on his sales accounts"; that it was "a short

82 discussion upon the subject of advancing on his book account"; that Burden proposed to make the advances upon receiving employment in the bankrupt's office at \$50 per week; that the "deal" was not consummated at that time; that Koehler then told him that he could get an indemnity bond; that thereafter he had another interview with the bankrupt; that "the substance of such interview was as set forth in the contract."

The witness further testifies as follows:

83 "Q. You tell me what you remember of it irrespective of the contract, what you said and what he said, just as you remember it? A. That he would pay me six per cent interest and he would furnish me his bond of indemnity.

"Q. What else would he pay you? A. I required of him in consideration of service that the indemnity company required of me to pay me a compensation for that.

"Q. I don't quite understand what service the indemnity company required of you that you were to charge Mr. Canfield for? A. It is stated in the contract.

84 "Q. I don't see anything stated there; what was the duty that you were to perform by which you would charge Mr. Canfield an extra per cent? A. I was required by the bond to examine his shipping receipts at the time of making this advance to him, and then subsequently during the month I was to examine his books minutely as regards these sales accounts that might be transferred to me or assigned to me."

"Q. Did you talk that over with Mr. Canfield, about the requirement of the indemnity bond? A. I told him that I would get up a memorandum of agreement.

"Q. Let us go back to the indemnity bond. Did you tell Mr. Canfield what you would be required to do under an indemnity bond?

A. I found out by reading the bond what it would be. 85

"Q. So that at the time that you talked about this arrangement with Mr. Canfield and that you were to charge him six per cent and some other per cent for something else, you didn't know what that extra charge would be for? A. Yes, I arrived at that and told him it would be two per cent.

"Q. How did you arrive at that? A. I told him two per cent on the amount outstanding of the money for services in doing the work required by the Bond and Fidelity Company."

* * * * *

"Q. No, I beg your pardon; I made a mistake; one per cent a month for services." 86

"Q. And your services as you say were for the examination of the accounts? A. Yes."

* * * * *

"Q. But we are through with that; you discarded that and came to another arrangement after you had heard about a bond. Didn't you ask Mr. Canfield for two per cent a month for these alleged services? A. I can't remember that I did; possibly though; I can't remember that I did ask him for two per cent a month."

* * * * *

"Q. Were you to be paid at one per cent at the time you made the loan or after the accounts were to be collected? A. The percentage that I was to have for my services which is one per cent a month, was to be at the time the settlement was closed for the accounts, when I had received a sufficiency to reimburse the amount that I had advanced with six per cent interest I was then to be paid at that time the amount, I mean to be paid one per cent for the time the money was outstanding. 87

"Q. But upon what were you to reckon that one per cent?

Mr. Crawford.—Same Objection.

The Referee.—Same Ruling.

88

Mr. Crawford.—Exception.

A. It was to be upon the amount that was outstanding from my hands, from my possession."

* * * * *

"Q. Were you to get one per cent of the whole ten thousand dollars in addition to the six per cent? A. I advanced him ten thousand dollars and I was to get one per cent.

"Q. In addition to the six per cent? A. In addition to the six per cent, so long as that ten thousand dollars remained out of my possession.

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"Q. At what period were you to be paid this one per cent? A. There was no stated time for that one per cent. The agreement was to be paid at the time that he reimbursed me the advance with six per cent interest and the one per cent was to be computed in for services at the same time.

"Q. Wasn't that one per cent a bonus? A. It was for services; I didn't understand it as a bonus. There were certain services and it was only a reasonable charge for the services."

* * * * *

"Q. Who procured that surety bond? A. He procured it.

"Q. Did he pay for it or you pay for it? A. I didn't pay for it.

90

"Q. He procured the surety bond? A. Yes, sir."

* * * * *

"A. I submitted to him a memorandum of an agreement which had that reference to attorney's fees there."

* * * * *

Mr. Crawford.—State what you did, Mr. Burden, just what you did? A. I examined the vouchers and shipping receipts, vouchers for delivered goods, shipment of the goods.

"Q. And do you want the Court to understand that vouchers are books? A. They are not books.

* * * * *

Mr. Crawford.—So far as the books are concerned state what you did with respect to those books? A. I don't claim I made an examination of the books." 91

* * * * *

"Q. Upon cross-examination you state that you made a partial examination of the books; now, please state just what you did? A. I compared the statements of accounts with the ledger and also compared the different shipments in the Statements with the shipping receipts and invoices.

"Q. When was that done? A. That was on the 16th of December.

"Q. How long were you occupied with that on the 16th of December? A. Pretty much all day; I commenced about 10 o'clock in the morning and worked until 6 o'clock in the afternoon, save half an hour for lunch. 92

"Q. Did you make any further examination of any sort or comparisons? A. I did in January.

"Q. Yes, well on what date in January? A. January 5th.

"Q. What did you do on January 5th? A. Examined the shipping receipts and invoices of shipments to Canfield.

"Q. How much time did that take on the 5th of January? A. I worked about half a day.

"Q. Did you make any further examination or comparisons? A. Yes, on the 13th of January I made another examination. 93

"Q. And what did you do then? A. Examined the shipping receipts for the shipments embraced in the statements of account that he assigned to me.

"Q. How much of your time did it take on the 13th of January? A. About half a day.

"Before executing the contract with Mr. Canfield did you make an estimate of the amount of time that it would require for you to examine the shipping receipts covering the shipments in the accounts to be assigned and

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make at least monthly an examination of the accounts of Mr. Canfield which should embrace a complete examination of the books, accounts and vouchers of Mr. Canfield as respects the accounts covered under the assignment and a strict comparison between all unpaid accounts as such accounts appeared on the records of Mr. Canfield and as such accounts appeared on the books of original entry; I ask you if you made such an estimate? A. Yes, sir.

95

"Q. What was your estimate at that time; how did you make it up? A. I estimated that the work of examining the books and shipping receipts required, would take from 5 to 6 days each month.

"Q. On what basis? Well, state how you made up your estimate; how you got it out? A. There was a further answer to that.

"Q. Go on and state? A. I said 5 or 6 days.

"Q. Now, state how you made up that estimate?

Mr. Engel.—I object to what the witness thought it would take him.

96

A. Under the requirement of the bond I estimated in addition to the 5 or 6 days that was mentioned that there was a possibility that I would be required to give considerable additional time for the reason that in case the accounts were not paid promptly I would have to give notice to the debtors under the requirements of the bond.

A. And that in that case I would have to notify the debtors of the assignment to me, and it was required that I should do that service by registered mail. I would also have to take up the collection of the accounts, which would involve additional work and time and trouble."

* * * * *

"Q. Had you at any time any intention to charge more than 6 per cent for interest on the advance? A. No, sir.

"Q. And that was intended by you to be a charge for services exactly as it is stated in the bond? A. It was. 97

"Q. Was that on your part intended as a subterfuge to cover any usury charge? A. It was not.

"Q. Was that inserted there in perfect good faith? A. It was."

* * * * *

"Q. What experience did you have? A. I had almost a lifetime's experience as a book-keeper and accountant.

* * * * *

"Q. Now, Mr. Burden you made this loan to Mr. Canfield for profit, did you not, you wanted to make some money on your own money? A. I wanted the interest and an additional percentage for my services as required. 98

"Q. But you made this loan for the purpose of making this 6 per cent interest? Isn't it; this loan of \$10,000? A. Yes, sir.

"Q. Now, then, let me ask you, you testified at a previous hearing that you borrowed this money? A. I did temporarily, yes, sir.

"Q. From whom did you borrow this money? A. The Corn Exchange Bank.

"Q. Weren't you required to pay them 6 per cent interest for that same amount of money? A. I got it for less.

"Q. How much? A. For 5 per cent. 99

"Q. So now you want to change your testimony to say you made this loan for a profit of 1 per cent or 6 per cent? A. What question do you ask me; I don't see."

Arthur J. Koehler, the broker in question testified that he first met Burden in April, 1910, in consequence of an advertisement of Burden's in the Herald; that after such meeting he called on the bankrupt and told him he "had a client who could lend him \$10,000 upon security provided he could get a position in his business";

100 that he thereupon arranged for a conference between the Bankrupt and Burden; that "no negotiations were consummated at that time."

The witness further testified as follows:

"Q. Well, now, after you found that out, didn't you then have another conversation with Mr. Burden with respect to some other form of making this loan? A. Before the contract was signed?

"Q. Yes? A. Yes.

101 "Q. Will you give us that conversation? Please? A. I said to Mr. Burden that provided the new statement was satisfactory to him, would he make some arrangement with Mr. Canfield provided Mr. Canfield would give security bond and Mr. Burden told me that the Fidelity & Casualty Co. Bond provided for certain work and contingencies and it seemed to him a satisfactory way of concluding business with Mr. Canfield, and if the statement was satisfactory he would make some arrangement with him.

"Q. Didn't you say before that you told Burden about this bond proposition? A. Yes.

"Q. Well, didn't you say a few moments before that Mr. Burden told you about the bond proposition? A. I did not.

"Q. You are sure about that? A. Pretty sure."

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* * * * *

"Q. Now, after the conversation about the statement did you send him again to Mr. Canfield? A. I did.

"Q. And what was the conversation leading up to his going to Mr. Canfield, after 5 weeks? A. Well, Mr. Burden had been to the Fidelity Company and seen the bond and he said under that, this bond, he thought probably some arrangement could be made with Mr. Canfield provided he was willing to pay him so much for his services—one per cent per month on the money so advanced."

* * * * *

"Q. Well, tell me what the discussion was about, the 1 per cent; this is the first time we have heard you talked with Mr. Canfield about the 1 per cent? A. I told Mr. Canfield what the terms were going to be, of course. 103

"Q. What did he say? A. I told him Mr. Burden wanted 1 per cent a month to cover his services in the matter as provided in the Fidelity & Casualty Bond."

* * * * *

"Q. Did you know who was to prepare the contracts? A. Why yes, Mr. Burden told me his lawyer.

"Q. But you had not any talk with either Mr. Canfield or Mr. Burden as to what the contents of those contracts should be or the terms? A. I talked it over with Mr. Burden in this way; and he told me that the Fidelity Company insisted upon having a contract drawn in a certain way, that he had to have the contract drawn to conform to their views." 104

* * * * *

"Q. Was the bond in the office of Mr. Canfield at the time the contract was signed? A. I don't know.

"Q. Did you see it? A. I did not.

"Q. Was there anything said by Mr. Burden or Mr. Canfield about the bond at the time this contract was signed? A. I think that Mr. Burden said that we would have to take those contracts to the Fidelity Company so as to have the bond issued." 105

The witness further testifies that he was present in the bankrupt's office on December 16, 1910, and saw the agreement in question executed; and that he appended his name thereto as witness for Burden.

The witness further testifies as follows:

"Q. Was anything said at that time about—respecting the stipulation in the contract for compensation to be paid for services to be performed? A. There was not.

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"Q. Was anything said about a bonus? A. There was not.

"Q. Was the subject of usury mentioned? A. No.

"Q. Was the word usury used? A. No.

"Q. Was the word 'usury charge' used? A. No.

"Q. In any conversation that you had with Mr. Canfield was the subject of Mr. Burden becoming a partner mentioned? A. No."

* * * * *

"Q. Did you tell Mr. Burden anything about a bond which the Fidelity & Casualty Company was issuing? A. I did.

107

"Q. Then, further negotiations were taken up with Mr. Canfield upon the basis of his giving the—giving one of these bonds? A. Yes, sir, a bond from the Fidelity & Casualty Company."

* * * * *

"Q. But you say you were there a half an hour? A. I mean during the whole time.

"Q. That was a half an hour? A. I think so.

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"Q. And all that was said or done was the reading of this paper composed of 4 pages and the signing of them, and that took half an hour? A. I don't say all that was said and done. In the first place we had to wait for Mr. Canfield to come in and then the papers were signed, and then we may have talked of other matters; I don't know; I don't say that was all that was talked about, but I mean as far as that particular contract is concerned."

"Q. (Repeated)? A. There was nothing spoken at all, except Mr. Canfield came in, read the paper and said it was all right.

The Referee.—Is that correct? A. As far as I can remember."

ABRAM L. CANFIELD, the bankrupt, testifies that Burden called upon him with an introduction from Koehler. 109

The witness further testifies as follows:

"Q. Did you then ask him to loan you \$10,000 or any sum of money? A. Mr. Burden's first talk was to become a partner into the business, to loan us \$10,000 or put \$10,000 into the business and to derive an income of \$250 per month for that interest, that \$10,000. He figured, and his proposition at that time was, that he was entitled to a 6 per cent interest, that charge per year, and he talked about a 2 per cent a month extra.

"Q. Yes. A. Now, he talked about working an hour or two a day and that that might suit him. He asked at that particular time for a statement of our business which was handed to him." 110

* * * * *

"Q. He went away and said he would come again, which he did a few days later.

"Q. Did you have a conversation when he called again? A. I did.

"Q. State the conversation, please? A. I said that we would not pay as much bonus as Mr. Burden asked for which was, understand, 6 per cent and 2 per cent per month. We could not afford to pay as much as that for the money to be put into the business and Mr. Burden said also that he would not—he would withdraw his proposition relative to doing any work there; there was now no work really that he could do, so the first proposition fell through. Now, another proposition was submitted by Mr. Burden in which he would simply loan us the money and take as security assigned accounts, and loan us \$10,000." 111

* * * * *

"Q. State the conversation? A. Why, then the proposition was put to me by Mr. Burden that he loan \$10,000 and first asked for 2 per cent bonus. We said we could not

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afford to pay it, and then he agreed to loan us \$10,000—.

Mr. Crawford.—I move to strike out what he agreed to do.

The Referee.—State what he said, in substance?

A. He said he would loan us \$10,000 on this basis, 6 per cent legal interest and 1 per cent per month, making in all 18 per cent.

“Q. Did Mr. Burden use the words bonus of 1 per cent a month at the time you had this conversation? A. Yes.

“Q. Did he say to you I want 6 per cent legal interest in addition to 1 per cent bonus every month for making this loan? A. Yes.”

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“Q. If I understood you before you said Mr. Burden at first asked for 2 per cent bonus per month? A. Yes, sir.

“Q. And at the second meeting it was finally arranged you pay 1 per cent to which both of you agreed? A. Yes, sir.

“Q. Who is Mrs. Herzog? A. My Secretary.

“Q. Was she present at any of these meetings? A. Present at all of them.

Q. She occupied the same room, the same desk? A. Her desk adjoins mine.”

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“Q. After this agreement for the loan of this money was consummated did Mr. Burden tell you he would call on his lawyer and bring back the written agreement? A. Yes.

“Q. Did you read this agreement? A. Well, I have only glanced it over.

“Q. Well, glance it over; did you notice in that agreement something pertaining to services to be rendered on the part of Mr. Burden? A. Yes, at the time the agreement was—.

“Q. Did you notice it? A. Yes, at the time the agreement was—.

“Q. Did you notice it? A. Yes.

“Q. Well, now, when you noticed that did he or you say to Mr. Burden—.”

In regard to this last mentioned matter the witness testifies as follows: 115

"Q. Well, now, when you noticed that did you say to Mr. Burden—.

"Q. At the time this agreement was brought to you I refer to? A. Yes, sir.

"Q. And you looked at the agreement and you noticed the clause about services to be rendered? A. Yes, sir.

"Q. What did you say to Mr. Burden? A. I asked Mr. Burden just what he meant by that clause; why, he said that that was simply to get around the usury law; there were no services to be rendered at all."

This testimony is flatly contradicted by Burden, who also denies that he ever used the language in question. He also denies that he ever used the word "E us" or the word "usury" in connection with any of the matters in question. 116

The witness, Koehler testifies that he was present at the time in question, but did not hear any such language used by Burden.

The bankrupt further testifies as follows:

"Q. Did Mr. Burden render any services to you of any kind? A. No, sir.

"Q. Did Mr. Burden ever examine your books? A. Not to my knowledge, no.

"Q. Except at the time you gave Mr. Burden the assignment of the accounts and Mr. Burden examined your shipping receipts to ascertain whether you had shipped the goods, did he afterwards axamine any shipping receipts or any books of yours? A. No, he never did. 117

"Q. Did he ever render any other services to you of any kind? A. No, sir."

* * * * *

"Q. You said you said to Mr. Burden you were hard pressed for money? A. I haven't used the words hard-pressed.

- 118 "Q. What did you say to him about your necessities? A. That we needed the money and could use it."

Sadie Herzog, formerly "S. Hess," testifies that she was in the employ of the bankrupt for 15 years, that her desk was about 10 feet from his; that she was present at meeting between the bankrupt and Burden about two months or so before the bankruptcy at which Burden made a certain proposal to lend \$10,000; that very shortly thereafter Burden came back with another proposition. The witness further testifies as follows:

- 119 "Q. Then I heard Mr. Burden say to Mr. Canfield that he would agree to allow him \$10,000 on assigned accounts and for this loan he would agree to give him 6 per cent—Mr. Burden said this—6 per cent and 1 per cent as a bonus, which was to cover the—

"Q. Just give us the conversation?

Mr. Crawford.—She is giving the conversation.

A. That was the 1 per cent bonus.

Mr. Crawford.—Which was that, go on from where you were interrupted; which was to cover—

A. To cover the bonus and usury charge.

- 120 *Mr. Crawford.*—I move to strike out usury charge; you didn't hear the word usury did you? A. Yes, I heard it; it was to cover the usury charge.

"Q. You heard them use that word? A. I certainly did, yes. Then Mr. Canfield told Mr. Burden he didn't have any use for him in the office to do any work; we had no work for Mr. Burden in the office, and then—

"Q. Are you referring to the conversation when Mr. Burden brought the agreement to Mr. Canfield? A. Well, this was the second time.

"Q. Well, after the second time that you call it, did Mr. Burden call with an agreement? A. I don't remember now.

"Q. I show you this paper and I ask you if you ever saw that before? A. Yes, I saw that. 121

"Q. Do you recall Mr. Burden bringing this paper to Mr. Canfield? A. Yes.

"Q. Isn't that the time you refer to as to the conversation concerning the usury charge or bonus? A. I think it was."

* * * * *

"Q. Isn't it a fact that Mr. Canfield asked Mr. Burden what was meant in this agreement concerning services and charges for services to be rendered by Mr. Burden?

Mr. Crawford.—Objected to as leading.

The Referee.—Sustained.

"Q. What did you hear Mr. Canfield say concerning this agreement shown you? A. I don't remember. 122

* * * * *

"Q. Did Mr. Burden, as far as your knowledge goes, render any services to Mr. Canfield? A. No, he did not.

"Q. Did Mr. Burden ever examine the books of Mr. Canfield? A. No, he did not.

"Q. With the exception of the time that these assignments of accounts were made by Mr. Canfield to Mr. Burden did Mr. Burden ever examine any shipping receipts in Mr. Canfield's place of business? A. Yes.

"Q. When? A. At the time the statements were made up he wanted to see the shipping receipts covering all these different items on the statements and they were shown to him. 123

"Q. That was at the time that these accounts were made up? A. At the time that these accounts were made up.

"Q. Did Mr. Burden ever again after that examine any shipping receipts? A. No, he did not."

* * * * *

"Q. And where were you at the time? A. At my shipping desk.

"Q. You weren't in the room with them? A. No, I was at the shipping desk with the windows open.

124

"Q. How far away was that? A. Directly in back of Mr. Canfield's desk there is a partition, a small partition and the windows were open, they are always open.

* * * * *

"Q. So that at the time that you say you overheard these conversations between Mr. Burden and Mr. Canfield you weren't actually in the room? A. No, I wasn't in the room.

"Q. You were on the other side of the partition? A. On the other side.

* * * * *

125

"Q. This partition you speak about, how thick was this? A. Oh, you could hear anybody, could hear anything.

"Q. How thick was it, about half an inch? A. An inch, half an inch or an inch.

"Q. And your desk was close with the partition? A. Right up with the partition exactly.

"Q. And Mr. Canfield's desk was close to the partition on the inside? A. Yes, sir.

"Q. Practically set back to back? A. Yes, sir, back to back.

"Q. And the windows were open? A. Yes.

"Q. And you heard the conversation clearly? A. Yes, you can hear all that is said there."

126

Upon a careful consideration of the foregoing and of all the proofs made I am satisfied that Burden was not employed in any bona fide way to render services, either to the bankrupt or to the Fidelity and Casualty Company; and that the arrangement, as contained in the agreement so made by and between the bankrupt and said Burden, by which said Burden was to receive one per cent per month on his advances "as compensation for the labor and services to be performed and time to be expended by him in making the examinations required by the terms of the bond exe-

cut by the Fidelity and Casualty Company of New York," was not made in good faith, or with the intention that such per centage should be paid for such purpose, but that such arrangement was intended to be and in fact was devised to cover a scheme, that said Burden should receive more than legal interest on his advances to the bankrupt. 127

I accordingly further report that in my opinion the agreement in question was usurious and wholly void, that the bankrupt estate is not indebted to said William H. Burden the petitioner herein, in any amount; that the petition of said Burden should be denied; that so far as appears 128 the Receiver has no money or other property belonging to said Burden; that the accounts so assigned by the bankrupt to said Burden, on January 5 and 13, 1911, respectively, are the property of the bankrupt estate; that they should accordingly be assigned and transferred by said Burden to the Receiver herein and that said Burden should be ordered to assign and transfer them accordingly.

May 27, 1911.

Respectfully submitted,

WILLIAM H. WILLIS,

Referee in Bankruptcy as Special Master. 129

(Endorsed:) — United States District Court, Southern District of New York.—No. 14582.—In the Matter of Abram L. Canfield, Bankrupt.—Report of Special Master on Petition of William H. Burden for an order directing the Receiver to pay over certain moneys.—William H. Willis, Referee in Bankruptcy, 80 Wall Street, New York City, N. Y.—U. S. District Court.—S. D. N. Y.—Filed June 1, 1911.

130 **Testimony Taken Before the Special
Master.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK,

IN BANKRUPTCY.

IN THE MATTER

of

ABRAM L. CANFIELD,
Bankrupt.

Before:
William H.
Willis, Esq.,
Referee in
Bankruptcy,
80 Wall Street.

131

New York, February 7, 1911, at 11 A. M.

HEARING ON RECLAMATION PROCEEDING OF
WILLIAM H. BURDEN.

PROCEEDED PURSUANT TO NOTICE.

APPEARANCES:

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MR. C. S. HOUGHTON, Receiver.

MESSRS. ENGEL BROTHERS, Attorneys for Re-
ceiver represented by

MR. LAZAROE, Of Counsel.

MR. JOHN J. CRAWFORD, Attorney for Claim-
ant, representing

MR. WILLIAM H. BURDEN, Claimant.

William H. Burden—Direct.

133

WILLIAM H. BURDEN, the Claimant, called as a witness in his own behalf and being duly sworn, testified as follows:

Direct examination by Mr. Crawford:

Q. What is your full name? A. William H. Burden.

Q. Where do you reside? A. 612 West 140 St.

Q. City of New York, Borough of Manhattan? A. Manhattan.

Q. I show you a paper and ask you if that is the contract made between you and Mr. Canfield? A. Yes, sir. 134

Mr. Crawford.—I offer the paper in evidence.

(Paper marked in evidence Claimant's Exhibit A of February 7, 1911.)

Mr. Lazaro.—Objected to on the ground that it is not the contract set forth in the petition and has no bearing whatever upon the subject matter before your Honor.

The Referee.—Overruled.

Mr. Lazaro.—Exception.

135

Q. I show you papers purporting to be monthly statements by A. L. Canfield & Company with assignments attached thereto, and ask you if those were ever delivered to you and by whom? and when?

A. They were delivered to me by Mr. Canfield on the 5th of January, 1911.

Q. At the time that each of those statements was delivered was this slip attached to each one?

A. It was, yes, sir.

Mr. Crawford.—I offer those in evidence.

136

William H. Burden—Direct.

It is stipulated that the papers be marked as one exhibit, consisting of 46 papers.

(Papers marked in evidence as Claimant's Exhibit B of February 7, 1911, 46 papers.)

Q. I show you another paper and ask you what that is? A. That is a list of the assigned accounts, assigned on the 5th of January.

Q. Was that delivered to you by Mr. Canfield at that time? A. It was.

137

Mr. Lazaroe.—That is objected to as the assignments are in evidence.

The Referee.—You better file that list.

Q. I show you a check drawn to the order of A. L. Canfield, dated January 5, 1911, drawn on the Corn Exchange Bank, for \$2,000; is that your check? A. Yes, sir, that is my check.

Q. Did you deliver it to Mr. Canfield?

Mr. Lazaroe.—I object to the counsel leading the witness.

138

Q. What did you do with that check? A. I delivered it to Mr. Canfield.

Q. From whom did you afterwards receive it? A. The \$2,000 check?

Q. Yes? A. I got it back from the bank.

Q. You received it back from the bank? A. I received it back from the bank, to balance my account.

Q. It was in your returned vouchers? A. In my returned vouchers, yes.

Mr. Crawford.—I offer it in evidence.

(Check marked in evidence Claimant's Exhibit C of February 7, 1911.)

William H. Burden—Direct.

139

Q. I show you another check dated January 5, 1911, payable to the order of A. L. Canfield, for \$3,000, drawn upon the Corn Exchange Bank, and ask you whose that check is? A. That is my check.

Q. You are familiar with Mr. Canfield's handwriting? A. Yes.

Q. Is that his endorsement on the back? A. That is his endorsement on the back. I saw him endorse it.

Q. When Mr. Canfield endorsed that check what did he do with it? A. He delivered that check to me.

140

Q. Delivered it to you? A. Yes, sir.

Mr. Crawford.—I offer the check in evidence.

(Check marked in evidence Claimant's Exhibit D of February 7, 1911.)

Q. Those checks were delivered on the day of their date? A. They were.

Q. And at the same time that Mr. Canfield delivered to you the assignments which are marked in evidence Exhibit B? A. I delivered the checks the same day.

141

Q. Did you deliver the checks at the same time that he delivered to you the assignments which have been put in evidence and marked Exhibit B? A. I did.

Q. I show you 63 papers purporting to be monthly statements rendered by A. L. Canfield to different persons, with an assignment attached to each, and ask you who delivered those to you and when? A. Mr. Canfield delivered them to me on the date of the assignment, January 13.

Q. They were delivered to you on January 13, 1911? A. Yes, sir.

142

William H. Burden—Direct.

Mr. Crawford.—I offer those in evidence.
(63 papers marked in evidence Claimant's
Exhibit E, February 7, 1911.)

Q. I hand you a paper and ask you what that is? A. That is a list of assigned accounts of Mr. Canfield to me on the 13th of January.

Q. From whom did you receive it? A. From Mr. Canfield.

Q. Whose signature is that at the bottom of the second page? A. Mr. A. L. Canfield's.

143

Mr. Crawford.—I offer the list in evidence.

Mr. Lazaro.—I object to that.

The Referee.—I sustain the objection.
File the list.

Q. I show you a check dated January 13, 1911, drawn on the Corn Exchange Bank, payable to the order of A. L. Canfield for \$5628. and ask you whose check that is? A. It is my check.

Q. In whose handwriting is the endorsement on the back? "A. L. Canfield"? A. It is in Mr. Canfield's handwriting.

144

Q. On what date did you deliver that check to Mr. Canfield? A. On January 13.

Q. 1911? A. 1911.

Q. Was that at the same time that he delivered to you the assignment which has been put in evidence and marked Claimant's Exhibit E? A. It is the check delivered to him at the time of receiving this assignment from him.

Q. These 63 papers which have been put in evidence and are marked Claimant's Exhibit E? A. Yes, sir, that's correct.

Q. Then what did Mr. Canfield do with that check? A. He endorsed it.

William H. Burden—Direct.

145

Q. After he endorsed it? A. Then he delivered it to me.

Q. What did you do with it? A. I deposited it in the bank.

Q. It came back to you? A. Came back to me as returned check.

Mr. Crawford.—I offer that in evidence.

(Check marked in evidence Claimant's Exhibit F, February 7, 1911.)

Q. I show you a check dated December 16, 1910, drawn on the Corn Exchange Bank, to the order of A. L. Canfield, for \$5,000 and ask you whose check that is? A. It is my check.

146

Mr. Lazaro.—I object to any testimony on December transactions. That has all been closed out. It is not before the court at this time.

The Referee.—Objection overruled.

A. It is my check.

Q. To whom did you deliver that check? A. Delivered it to Mr. A. L. Canfield.

Q. On what date? A. December 16, 1910.

147

Q. How did that check come back to you? A. From the bank, cancelled.

Q. Among your paid vouchers? A. Among my paid return checks.

Mr. Crawford.—I offer the check in evidence.

Mr. Lazaro.—Objected to as immaterial and irrelevant.

The Referee.—Overrule the objection.

Mr. Lazaro.—Exception.

(Check marked in evidence Claimant's Exhibit G of February 7, 1911.)

148

William H. Burden—Direct.

Q. I show you another check dated December 16, 1910, drawn upon the Corn Exchange Bank to the order of A. L. Canfield for \$5,000 and ask you whose check that is? A. That is my check.

Q. To whom did you deliver that check? A. To Mr. A. L. Canfield.

Q. On the date of the check? A. On the date of the check.

Q. How did that check come back in your possession? A. Came back through the bank as returned voucher.

149

Mr. Crawford.—I offer the check in evidence.

Mr. Lazaroe.—Same objection.

The Referee.—Overruled.

Mr. Lazaroe.—Exception.

(Check marked in evidence Claimant's Exhibit H of February 7, 1911.)

Q. At the time that these checks, Exhibits G and H were delivered to Mr. Canfield, did he deliver anything to you? A. He delivered to me assigned accounts.

150

Mr. Lazaroe.—Your Honor will take a general objection to all this testimony on the December transaction?

The Referee.—Overruled.

Mr. Lazaroe.—Exception.

Q. I show you a paper and ask you—on the third sheet of which you find the name A. L. Canfield, and ask you by whom that was delivered to you? A. Delivered to me by Mr. Canfield.

Q. On what date? A. December 16, 1910.

Q. Was there anything else delivered with it?

William H. Burden—Cross.

151

A. There was assigned papers agreeing with that list.

Q. Assigned papers in the form that we have in Exhibits B and E? A. In the same form.

Mr. Crawford.—I offer this in evidence, the list delivered by Mr. Canfield. Mr. Canfield's signature is on it.

Mr. Lazaroe.—That is objected to as there is no proof here of the assignment.

The Referee.—Objection sustained.

Mr. Crawford.—Exception.

152

Cross examination by Mr. Lazaroe:

Q. Mr. Burden, I show you Exhibit D of this date and ask you if it is not a fact that you deposited this check in your own bank on the same day? A. Yes, I deposited it the same day.

Q. You gave the check to Mr. Canfield and he endorsed it and immediately returned it to you? A. Yes.

Q. You gave him no cash at that time when he returned this check to you? A. I did give him cash at that time.

Q. Did you give him \$3,000?

153

Mr. Crawford.—I object to the question as calling for the conclusion of the witness.

The Referee.—I overrule the objection.

A. I did not in cash, no, sir.

Q. Isn't it a fact that Exhibit F of this date was deposited by you in your own bank on January 14? A. Yes.

Q. You gave this check to Mr. Canfield on January 13? and he immediately endorsed it over and returned it to you? A. Yes, sir, that's right.

154

William H. Burden—Cross.

Q. You gave him no cash consideration at the time he returned this check to you? A. I gave him a consideration; it was not cash though.

Q. Did you give him cash consideration at this time? A. No, I did not give him cash.

Q. What did you give him when that check was returned to you? A. I returned the uncollected accounts, amounting to something over \$11,000.

Subscribed to before me this }
day of , 1911. }

155

Referee in Bankruptcy.

Hearing adjourned to February 10, 1911, at 3 P. M.

156

UNITED STATES DISTRICT COURT, 157

SOUTHERN DISTRICT OF NEW YORK.

In Bankruptcy.

IN THE MATTER

*of*ABRAM L. CANFIELD,
Bankrupt.

Before:
 William H.
 Wills, Esq.,
 Referee in
 Bankruptcy,
 80 Wall
 Street.

158

New York, February 10, 1910, 3 P. M.

HEARING ON RECLAMATION PROCEEDING OF
 WILLIAM H. BURDEN.

PROCEEDED PURSUANT TO ADJOURN-
 MENT.

APPEARANCES:

MESSRS. ENGEL BROTHERS, Attorneys for Re-
 ceiver, represented by.

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MR. ADOLPH ENGEL, Of Counsel.

MR. CLARENCE S. HOUGHTON, Receiver.

MR. JOHN J. CRAWFORD, Attorney for Claimant.

MR. WILLIAM H. BURDEN, Claimant.

Mr. Houghton.—In compliance with the
 notice to produce, the Receiver produces 82
 accounts against different debtors, each
 bearing an assignment from A. L. Canfield
 annexed thereto.

(82 papers marked Claimant's Exhibit
 I for identification, February 10, 1911.)

WILLIAM H. BURDEN, the Claimant, Re-called.

Continuation of direct examination by Mr. Crawford:

Q. Were the accounts which have been marked Claimant's Exhibit I for identification some of the accounts that were delivered to you by Mr. Canfield on the 16th day of December, 1910? A. They were.

Q. When did you return them to Mr. Canfield?

A. On the 13th of January, 1911.

161

Q. Was that at the same time that Mr. Canfield delivered to you your check for \$5628? A. At that time, yes, sir.

Q. Did Mr. Canfield on December 16, 1910, deliver to you any accounts except these that are in this Exhibit I? A. Yes, sir.

Q. How many? A. There were sixteen.

Q. Sixteen besides those? A. Yes, sir.

162

Q. What accounts were those? A. L. Bauman & Co., \$917.50; Bishop & Bump, \$31; F. B. Callister, \$48.85; H. Christensen, \$12.75; L. Ettleson & Son, \$69; I. J. Gischer Furniture Company, \$115.25; I. Fleishman, \$219.50; Goerke & Company, \$11.32; Frank M. Groendyke, \$8.25; M. E. Hastings, \$9.30; Haugh & Fletcher, \$25.25; Johnston Hardware Company, \$101.05; L. Kaplan, \$22.45; W. Metzger, \$20.50; Cowperthwait, Van Horn & Company, \$336.20; Armbrust & Son, \$63.50.

Q. Were those accounts also returned to Mr. Canfield at the same time you returned these which are marked Exhibit I? A. Yes, sir.

Q. On the accounts for which the assignments were delivered to you on the 16th of December, 1910, did you make any collections? A. Yes, sir.

William H. Burden—Direct.

163

Q. How was the money collected? A. It was collected by Mr. Canfield.

Q. And then what did Mr. Canfield do with it? A. He turned it over to me.

Q. Did he turn over to you the check of the debtor or his own check? A. The check of the debtor.

Q. Is that a correct list of the accounts that were paid and the amounts that were paid thereon? A. Yes, sir.

By Mr. Houghton:

164

Q. How do you know that those are the correct amounts? A. The amounts came to me, the money came to me.

Q. Did you carry it in your memory? A. Oh no, I kept books.

Q. Is that a correct transcript from your books? A. Yes, sir.

Q. Have you got the books? A. I have at home.

Mr. Houghton.—I shall object unless I can see the book.

The Referee.—I sustain the objection.

165

By Mr. Crawford:

Q. Have you any paper in your possession that would refresh your recollection as to the accounts that were paid and the amounts that were paid? A. I have.

Q. Now upon looking at that paper and having your recollection so refreshed, can you state the accounts? A. I can.

Q. What are they? A. Lawrence Hardware Company \$41.98; John Looney, \$51.48; Berger Furniture Store, \$113.30; Cowperthwait & Son,

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William H. Burden—Direct.

\$51.12; L. Bamberg & Company, \$14.15; Headley & Whalen, \$112.48; W. P. Bridble, \$129.75; Max Kurlansburg, \$22.50; George & Company, \$200.56; Berger Furniture Store, \$68.90; Gaff Furniture Company, \$308.13; Union Sulphur Company, \$33.20; H. V. Carman Company, \$17.20; Mead & Taft, \$11.; L. Ettleson & Son, \$50.; A. Conwin, \$15.45; S. Bauman, \$65.75; Isthmian Canal Commission, \$24.80; C. G. Bailey, \$10.; S. C. Baker, \$13.36; Gatley Furniture Company, \$19.67; H. Kissel, Jr., \$12.50. Total amount, \$1,487.28.

167

Q. Is that all that you received on those accounts that were assigned to you by Mr. Canfield on the 16th day of December, 1910? A. Yes, sir.

Q. Did you before you made the contract with Mr. Canfield which is in evidence and marked Claimant's Exhibit A, require from him any statement as to the condition of his business? A. Yes, sir.

Q. Did he render you a statement in writing? A. Yes, sir.

Q. Is that the statement that was delivered to you? A. Yes, sir.

168

Subscribed to before me this
day of 1911.

Referee in Bankruptcy.

Mr. Crawford.—I offer that in evidence.

Mr. Houghton. I object as incompetent.

The Referee.—I sustain the objection.

Hearing adjourned to February 16, 1911, at
2 P. M.

William H. Burden—Cross.

169

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK,

In Bankruptcy.

In the Matter

of

ABRAM L. CANFIELD,
Bankrupt.

Before:
William H.
Willis, Esq.,
Referee in
Bankruptcy,
80 Wall
Street.

170

NEW YORK, FEBRUARY 16, 1911, 2 P. M.

HEARING ON RECLAMATION PROCEEDING
OF WILLIAM H. BURDEN

PROCEEDED PURSUANT TO NOTICE.

APPEARANCES:

MR. CLARENCE S. HOUGHTON, Receiver.

MESSRS. ENGEL BROTHERS, Attorneys for Receiver, represented by

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MR. ADOLPH ENGEL, Of Counsel.

MR. JOHN J. CRAWFORD, Attorney for Claimant.

MR. WILLIAM H. BURDEN, Claimant.

WILLIAM H. BURDEN, the Claimant, Re-called.

Cross examination by Mr. Houghton:

Q. Did I understand you to say at the last hearing that you had been obliged to borrow some of

this money that you paid to Canfield? A. I chose to borrow it.

Q. How much? A. \$10,000.

Q. When did you borrow that? A. On the 15th of December, 1910.

Q. Have you produced at this hearing all the checks drawn by you to the order of Canfield? A. I have, yes, sir.

Q. Did Mr. Canfield pay you any cash from this 16th day of December up to his assignment? A. Any currency?

173 Q. Yes? A. No, sir.

Q. Did he ever give you any of his personal checks? A. No, sir.

Q. So that outside of the checks that you gave him and the checks he delivered to you from these assigned accounts, there was no other money transaction? A. No.

Q. How long have you known Mr. Canfield? A. Since October last, some time in October.

Q. How did you meet him? A. I had a card of introduction to him and called on him at his place of business.

174 Q. Was there anybody with you when you called? A. I don't remember that there was any one.

Q. Do you remember the name of the person that introduced you to Mr. Canfield? A. I do.

Q. What was his name? A. A. J. Koehler.

Q. What is Mr. Koehler's business? A. He is a broker I understand.

Q. When you first saw Mr. Canfield with this card of introduction, what did you say to him or what did he say to you? A. It is hard for me to remember all that was said.

William H. Burden—Cross.

175

Q. Well, try? A. I called on him to talk over the matter of entering into this deal with him, which I subsequently did.

Q. How did you know that he wanted to enter into any deal? A. I was so informed by his broker.

Q. Mr. Koehler? A. Mr. Koehler.

Q. What kind of a deal? A. He wanted to get the use of some money on his book accounts.

Q. Now after you saw him you discussed the subject, did you not, of Mr. Canfield's getting the use of some money? A. Yes, discussed the subject of buying his sales accounts, of advancing him money on his sales accounts. 176

Q. What was the transaction as far as you can remember?

Mr. Crawford.—I object if Your Honor please because the agreement between Mr. Canfield and Mr. Burden is in evidence. Any negotiations of that character are merged in the written instrument.

The Referee.—I overrule the objection.

Mr. Crawford.—Exception.

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A. It was a short discussion upon the subject of advancing him on his book accounts.

Q. Well, you must be able to remember the exact details of that? That is very general, what you give me? A. It was upon the amount that I could let him have, that I could take over.

Q. Tell us that; what amount did he say he wanted? A. I think he wanted \$20,000, and it was my idea at the time probably to let him have \$20,000.

Q. So what did you say to that? A. It stood in abeyance that time as to the amount. We spoke

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William H. Burden—*Contd.*

of \$20,000, but it stood in abeyance. I required of him a statement of his financial condition and he was unable to furnish it. He was unable to furnish me a statement except one that had been standing, that he made out a year before.

Q. Before you got to that, wasn't there any discussion as to terms, on what basis you were to loan him the money?

Mr. Crawford. I object to that upon grounds previously stated.

The Referee. Overruled.

179

Mr. Crawford. Exception.

A. We spoke of an arrangement of this kind, that I would loan him on advance upon his sales accounts, and it was then proposed that I was to take a position in his office as a financial man in his office.

Q. At a salary? A. Yes.

Mr. Crawford. Objection.

The Referee. Overruled.

Mr. Crawford. Exception.

180

Q. How much? A. \$50 a week was the amount spoken of.

Q. Who suggested that, Mr. Canfield, or you? A. That was the terms I spoke to him of coming with him, if it would satisfy him.

Q. So as I understand you were to loan him \$10,000 and you were to take a position in his office at \$50 a week? A. I don't know that we referred to it as a loan. I was to take his sales accounts with a certain per cent. of margin in them.

Q. How did you term that when you talked with him?

William H. Burden—Cross.

181

Mr. Crawford.—Same objection.

The Referee.—Overruled.

Mr. Crawford.—Exception.

A. As an advance upon his sales accounts at 75 cents on the dollar.

Q. Was there anything said as to the amount of interest he was to pay? A. Yes, sir, six per cent.

Q. What else was he to pay for this loan? A. Nothing else for the loan, only for the services.

Q. What else?

182

By the Referee:

Q. What distinction between an advance and a loan? A. I took them over as assigned accounts and he was to repay me the amount with six per cent, and at that time we talked about the position in the office.

Q. How did the transaction differ from an ordinary loan with security? A. Differed in this way, that at that time we spoke of my taking a position in his office, which never came to pass.

Q. Do you think that constitutes a difference? A. I was to secure a position if he had such an opening. He didn't have it.

183

Q. You think because of that that the money wasn't a loan? A. A loan or an advance on his accounts; might be considered a loan.

Q. You have said twice here I think it wasn't a loan; what was it if not a loan? A. It could be construed as a loan or an advance upon his accounts.

Q. How do you distinguish between an advance and a loan? A. Perhaps it is the same thing.

William H. Burden—Cross.

By Mr. Houghton:

Q. You did not take a position? A. I didn't take the position and we didn't consummate the deal on that line.

Q. Then you discussed it on another line? A. Subsequently, yes, sir, some time afterwards.

Q. How long afterwards? A. Probably a month afterwards.

Q. What was the line that you next discussed? A. His broker suggested a different line.

185 Q. Mr. Koehler? A. Yes, sir.

Q. Was his broker with Mr. Canfield when the line was suggested? A. No, sir.

Q. Did he suggest it to you first, Mr. Koehler? A. He informed me that I could get an indemnity bond.

Q. From whom? A. The idea of my taking a position—that was my idea, that I could be in the office and see to the financial management of the business.

Q. You didn't need the position did you? A. I changed from that.

186 Q. You didn't require that position? A. Oh, I would have been glad to have had it.

Q. For the \$50. a week? A. Yes, sir.

Q. But at all events you didn't consummate that deal? A. No, sir.

Q. We will continue on with Mr. Koehler and the next proposed deal? Mr. Koehler stated something to you about an indemnity bond? A. That I could get an indemnity bond.

Q. You yourself get that? A. I think he informed me that I could get one indemnity bond.

Q. For what purpose? A. For guaranteeing the validity of the accounts, and that I could re-

ceive also the prompt payment of any money that might come into Mr. Canfield's hands of his assigned accounts.

Q. So that after you had received that information from Mr. Koehler, did you have another interview with Mr. Canfield? A. I did.

Q. What in substance was that interview? A. The substance of it was as set forth in the contract.

Q. You tell me what you remember of it irrespective of the contract, what you said and what he said, just as you remember it? A. That he would pay me six per cent. interest and he would furnish me his bond of indemnity.

188

Q. What else would he pay you? A. I required of him in consideration of service that the indemnity company required of me to pay me a compensation for that.

Q. I don't quite understand what service the indemnity company required of you that you were to charge Mr. Canfield for? A. It is stated in the contract.

Q. I don't see anything stated there; what was the duty that you were to perform by which you would charge Mr. Canfield an extra per cent.? A. I was required by the bond to examine his shipping receipts at the time of making this advance to him, and then subsequently during the month I was to examine his books minutely as regards these sales accounts that might be transferred to me or assigned to me.

189

Q. During what month were you to make that? A. During one month, during the pending of the outstanding of the assigned accounts.

Q. Did you talk that over with Mr. Canfield before anything was done with reference to the indemnity bond?

190

William H. Burden—Cross.

Mr. Crawford.—Same objection.*The Referee.*—Overruled.*Mr. Crawford.*—Exception.

A. The whole thing was talked over.

Q. Did you talk that over with Mr. Canfield, about the requirement of the indemnity bond?

A. I told him that I would get up a memorandum of agreement.

191

Q. Let us go back to the indemnity bond. Did you tell Mr. Canfield what you would be required to do under an indemnity bond? A. I found out by reading the bond what it would be.

Q. So that at the time that you talked about this arrangement with Mr. Canfield and that you were to charge him six per cent. and some other per cent. for something else, you didn't know then what that extra charge would be for? A. Yes, I arrived at that and told him it would be two per cent.

192

Q. How did you arrive at that? A. I told him two per cent. on the amount outstanding of the money for services in doing the work required by the bond of the Fidelity Company.

Q. We haven't any of us seen the bond yet? A. Mr. Canfield had been furnished with a copy of it.

Q. So you now remember that Mr. Canfield had the bond, a copy of it? A. Yes.

Q. You told him that you were to charge two per cent. per month? A. Two per cent. for my services.

Q. That was over and above the six per cent? A. Yes.

Q. And your services as you say were for the examination of the accounts? A. Yes.

By the Referee:

Q. You don't mean at the rate of two per cent. per annum? A. Two per cent. a month.

Q. What is the whole amount, 7 per cent? A. No, I beg your pardon; I made a mistake; one per cent. a month, for services.

By Mr. Houghton:

Q. Did you ask him first for two per cent. a month? A. I don't remember that I did.

Q. You have no recollection of that? A. No, it was six per cent. at first and \$50 a week for services as office manager; that was the first talk with him.

Q. Now the second talk was six per cent., and didn't you first ask him for two per cent. a month for these alleged services? A. No, sir, I only asked for six per cent and \$50 a week for services.

Q. But we are through with that; you discarded that and came to another arrangement after you had heard about a bond. Didn't you ask Mr. Canfield for two per cent. a month for these alleged services? A. I can't remember that I did; possibly though; I can't remember that I did ask him for two per cent. a month.

Q. Now on what were you to compute that two per cent?

Mr. Crawford.—That is objected to on the ground that it is specified in the contract.

The Referee.—Overruled.

Mr. Crawford.—Exception.

Q. On what were you to compute that two per cent., or how did you arrange in your conversation that you were to compute that two per cent.?

A. Not two per cent; six per cent. interest and one per cent.

Q. Well, one per cent. then? A. We computed it on the length of time that the money was—until the money was collected, and turned over to me on the accounts.

197 Q. Were you to be paid at one per cent. at the time you made the loan or after the accounts were to be collected?

Mr. Crawford.—I object to that on the ground that that matter is covered by the written instrument.

The Referee.—Overruled.

Mr. Crawford.—Exception.

198 Q. The percentage that I was to have for my services which is one per cent. a month, was to be at the time the settlement was closed for the accounts, when I had received a sufficiency to reimburse the amount that I had advanced with six per cent. interest. I was then to be paid at that time the amount, I mean to be paid one per cent. for the time the money was outstanding.

Q. But upon what were you to reckon that one per cent?

Mr. Crawford.—Same objection.

The Referee.—Same ruling.

Mr. Crawford.—Exception.

A. It was to be upon the amount that was outstanding from my hands, from my possession.

Q. Were you to get one per cent. of the whole ten thousand dollars in addition to the six per

cent.? A. I advanced him ten thousand dollars and I was to get one per cent.

Q. In addition to the six per cent.? A. In addition to the six per cent, so long as that ten thousand dollars remained out of my possession.

Q. At what period were you to be paid this one per cent.? A. There was no stated time for that one per cent. The agreement was to be paid at the time that he reimbursed me the advance with six per cent. interest and the one per cent. was to be computed in for services at the same time.

200

Q. Wasn't that one per cent. a bonus? A. It was for services; I didn't understand it as a bonus. There were certain services and it was only a reasonable charge for the services.

Q. Did you have any conversation with Mr. Canfield as to the time of the maturity of the accounts?

Mr. Crawford.—I object to that upon the ground that the matter is covered by the provisions of the written contract.

The Referee.—Overruled.

Mr. Crawford.—Exception.

201

A. Not before he made them out.

Q. Now you signed an agreement didn't you, which is in evidence? A. With Mr. Canfield?

Q. Yes? A. I did.

Q. Prior to the signing of that agreement was there any other arrangement as to the maturity of the accounts?

Mr. Crawford.—I object to that upon the ground that the arrangements of the parties, and all prior negotiations are merged in the written instrument.

202

William H. Burden—Cross.

The Referee.—Overruled.*Mr. Crawford.*—Exception.

A. The accounts were to be running to maturity; they were not to be past due or anything of that kind.

Q. Do you know what I mean? In other words would it be for thirty days or forty days or ten days? A. We spoke of sixty days and ninety days.

203 Q. What was the final arrangement as to the maturity of the accounts, was it 60 or 90 or shorter?

Mr. Crawford.—Same objection.*The Referee.*—Same ruling.*Mr. Crawford.*—Exception.

A. I required that he would offer accounts to me having 60 or 90 days to run; 60 and 90 days we spoke about.

204 Q. Now there is no mistake about that? Your understanding was that the accounts were to run 60 or 90 days? A. That was the kind that I spoke of.

Q. What kind did you decide upon finally?

Mr. Crawford.—Same objection.*The Referee.*—Same ruling.*Mr. Crawford.*—Exception.

A. I left it to him to make up the accounts; he had the accounts in his books and he submitted them to me and I found that the accounts were due April 1st and I made no objection.

Q. Didn't you have some arrangement whether the account was to be paid in one day or ten days

or sixty days? A. No definite arrangement of that kind.

Q. Your understanding was that the accounts to be assigned to you were accounts that were to mature in 60 or 90 days; that is so, isn't it? A. That's right.

Q. Now on this 14th day of December, 1910, you entered into this agreement, you have stated something in reference to a surety bond. Who procured that surety bond? A. He procured it.

Q. Did he pay for it or you pay for it? A. I didn't pay for it.

Q. He procured the surety bond? A. Yes, sir.

Q. Did you sign any papers in reference to that surety bond, any application or any agreement with reference to the surety bond? A. Only in the contract; there is a contract that refers to the bond between Mr. Canfield and me.

Q. You didn't in any way become a party to that bond except as your signature to this agreement? A. No, sir.

Q. Did you have a copy of that bond? A. I had the original; it was delivered to me.

Q. Did you have any arrangements with Mr. Canfield about charging for your attorney's fees?

A. No arrangement of that kind other than specified in the contract.

Q. What did you say to Mr. Canfield about attorney's fees?

Mr. Crawford.—Objected to as incompetent on the ground that the instrument appears to be complete on its face.

The Referee.—Overruled.

Mr. Crawford.—Exception.

208

William H. Burden—Cross.

A. I submitted to him a memorandum of an agreement which had that reference to attorney's fees there.

Q. What work was to be covered?

Mr. Crawford.—I object to that as a conclusion of the witness.

209

Q. I am asking if anything was said in the discussion as to what work these attorney's fees covered? A. We didn't discuss it otherwise than as expressed in the contract.

Q. Just for attorney's fees and nothing was said about it? A. Nothing outside of the contract that I remember.

Q. You were to pay a sum equal to 75 per cent. of the total amount of the loan? A. Yes, sir.

Q. What were you to do with the other 25 per cent?

Mr. Crawford.—I object to that upon the ground that the contract speaks for itself.

Mr. Houghton.—I will withdraw that question.

210

Q. Now this extra one per cent. Did you compute that extra one per cent on the \$10,000 which you advanced? A. I did for a few days while it was outstanding.

Q. Now we will get to the several assignments of accounts. The first assignment of accounts was on December 16, was it not? A. That's right.

Q. How much money did you loan to Mr. Canfield on the December account?

Mr. Crawford.—I object to the question upon the ground that it assumed that it

was a loan and places a construction upon the transaction.

Q. How much money did you hand over or pass over to Mr. Canfield for this December account?

A. I advanced him \$10,000 on December 16.

Q. What was the total amount of the accounts that were assigned to you? A. \$13,334.34.

Q. Who selected those accounts that were assigned to you? A. He selected them.

Q. Did you have anything to do with the selection? A. I passed on them as he submitted them to me—I accepted them.

212

Q. Where did he submit them to you? A. In his office.

Q. Were you in his office? A. I was.

Q. He selected the accounts as I understand and submitted them to you? A. Yes, sir.

Q. Did any of those accounts mature in less than thirty days? A. I think all of them matured according to his statements given me in less than thirty days.

Q. You examined the accounts then as he handed them to you? A. Yes, sir.

Q. Isn't it a fact that all of those accounts did not mature until thirty days or more? A. His statement showed they did not mature until January 1st.

213

Q. You examined the accounts? A. There was no date of maturity on the accounts. There was a printed form on the statements. He explained that that didn't hold as to the maturity of the account.

Q. If there was no statement on the accounts, wasn't it your understanding that those accounts should mature in less than thirty days? A. No,

sir. His list that he gave me at the time indicated that they matured the first of January.

Q. Now how much did you collect on those \$13,000 worth of accounts? A. I couldn't give you the exact amount. It is \$1,400 and some odd dollars. \$1,487. I think it is, but I can give you the exact amount.

Q. Give me the exact amount? A. (After looking at paper) \$1,487.28.

Q. That was all that you collected on those accounts up to January 5? A. Up to January 10 inclusive.

Q. Was that the day that you re-assigned the accounts back to him? A. No, sir, on the 13th of January.

Q. When was the next transaction that you had with Mr. Canfield with reference to these accounts? A. He made an assignment of another lot of accounts January 5.

Q. And you had not yet re-assigned the old accounts back to him? A. No, sir.

Q. Now what happened on January 5? A. On January 5 he made assignment of accounts to me on which I advanced him the \$5,000.

Q. What was the amounts of the accounts he assigned to you? A. The amount assigned to me on January 5 was \$6,776.31.

Q. For which you gave these two checks? A. One for \$3,000 and one for \$2,000, yes.

Q. How did it happen that this assignment of accounts was made on January 5? What led up to it? A. The object was to make a new assignment so that he could liquidate or take up the assignments previously made to me.

Q. But these assignments had not matured yet? A. Yes, the accounts were due.

Q. Were any of them past due? A. Some were past due and weren't paid.

Q. How many were past due and not paid? A. My recollection was they were nearly all past due on January 5.

Q. And had not been paid? A. And had not been paid, no, sir.

Q. Was that the only reason which led up to the transaction of January 5 that you recall? A. That is all, the only reason that I recall.

Q. Did he state why he wanted that money? A. No.

218

Q. Did you ask him why? A. It wasn't at his instance, it was at mine.

Q. What did you say to him? A. I required him to take a re-assignment of the first accounts because they had matured, or give me the money for them, or pay me the amount that I had advanced.

Q. But you were going to advance him more money weren't you? A. That was the plan of doing it, advance him on new accounts and deliver back to him the accounts which had matured and was unpaid, uncollected.

Q. So as a result of that you handed him two checks? A. Yes, sir.

219

Q. One of \$3,000 and one of \$2,000?

Q. On January 5 how much did you claim was due you? A. The difference between \$1,487. and the \$10,000, or slightly over \$10,000.

Q. How do you make \$1,487.? A. I had collected \$1,487. and I had advanced him \$10,000. It was the difference.

Q. So there was the difference between the amount you collected and the amount you had loaned him which you claimed to be due? A. Yes, sir.

Q. So you gave him \$5,000 for what purpose?

A. For the amount of accounts that he had assigned to me at that time.

Q. In other words you were to advance him the money and he was to pay you back with your money? A. He paid me back the check for \$3,000.

Q. So he paid you back with the money that you had loaned him? A. Yes.

Q. By delivering your own check back to you? A. Yes, sir.

Q. What did he do with the other check, the 221 \$2,000 check? A. He kept it.

Q. So that on January 5 he owed you \$12,000 less \$1,400. that you had collected, isn't that so?

A. Yes, sir, and the interest and services.

Q. Did you charge him for interest and services?

A. Not at that time.

Q. So that on the January 5 transaction no claim was made on that date for interest or the one per cent. for services? A. No.

Q. Now did you on that date re-assign the balance of the claims to Mr. Canfield? A. On the 13th.

Q. Why did you wait till the 13th? A. We 222 waited on him to complete making up the accounts, waiting on him.

Q. Did you make up the accounts or did he? A. He made them up.

Q. Did you know how much had been paid you on the 5th of January? A. I did.

Q. What do you mean by making up the accounts? A. He made up the accounts that he wished to assign me. He was making up the accounts that he was going to assign me in lieu of the accounts which I was to return to him or re-assign to him.

Q. On what day was it that he made up the new accounts which he assigned to you in lieu of the old accounts? A. January 13.

Q. On January 13 did you re-assign him all the old accounts? A. I did.

Q. Do you remember what the amount was? A. I re-assigned him \$11,847.06.

Q. Had any of the accounts been collected between the 5th day of January and the 13th day of January? A. On what?

Q. On the December assignment, other than that you have testified to? A. January 10 was the last collection on December 16 assignment. 224

Q. And there were no collections between January 10 and January 13? A. Not on that assignment.

Q. Was there any between January 5 and January 10? A. Yes, sir.

Q. How much—this is on the December assignment; you have already stated the amounts collected January 10? A. January was the last date.

Q. You have already stated that amount? A. No, I have not given the amount of it.

Q. To make it simpler, give me the amount you collected from January 5 to the time that you re-assigned the accounts back? A. \$101.53. 225

Q. What did you do with that \$101.53 you collected? A. I credited it against the assignment of December 16th.

Q. Did you credit against that any interest or the extra one per cent.? A. The interest calculation had not been made at that time.

Q. Or the extra one per cent.? A. No, sir.

Q. On January 13 new accounts were assigned to you? A. Yes, sir.

Q. Did they include any of the old accounts, of the December accounts? A. Not that I know of.

Q. Who selected the new accounts? A. Mr. Canfield.

Q. And when were those accounts to mature? A. April 1, 1911.

Q. Why was it that those matured in three months and the December accounts in less than 30 days? A. He selected them, he made the selection.

227 Q. And you accepted that selection? A. I accepted them, yes, sir.

Q. What did you pay him when these new accounts were assigned? A. \$5628.60.

Q. What was the amount of the accounts assigned to you? A. The amount was \$7514.83.

Q. How did you happen to make out your check under date of January 13, 1911, for the amount \$5628.60? A. That was approximately I suppose 75 cents on the dollar, but it required that amount to take over the balance of the December 16 assignment, take over the uncollected accounts of December 16.

228 Q. But hadn't you given him the money to take over that already on January 5? A. No, sir, took \$3,000 of that \$5628. That made \$8628.

Q. To get right down to it, on January 13 how much was due you on the December assignment? A. \$5628.60.

Q. How much had been paid to you on the December assignment? A. \$1487.70 and the \$3,000 check delivered January 5.

Q. Then you re-assigned the old accounts back to him? A. I did.

Q. And he assigned new accounts to you? A. Yes.

William H. Burden—Cross.

229

By the Referee:

Q. Was that done both times, after the first transaction and also after the second transaction?

Mr. Houghton.—There was only one transaction of re-assigning accounts.

A. Only one re-assignment to him, January 13.

By Mr. Houghton:

Q. How many transactions of assigning accounts to you? A. There was three dates of it.

230

By the Referee:

Q. It was only on the third occasion you re-assigned accounts you then held? A. Yes.

By Mr. Houghton:

Q. What was the amount of the accounts assigned on January 5 to you? A. \$6776.31. The amount advanced at that time was \$5,000.

Q. That is in the two checks you have already testified to? A. Yes, sir.

231

Q. Did any other money pass on the January 13 to Mr. Canfield except the \$5,628.60? That is the only one of January 13, is it not? A. That was the only check passed at that time, the only money passed.

Q. Or check? A. Yes, sir.

It is hereby stipulated that the petition in bankruptcy in this case was filed on the 18th day of January, 1911, subject to correction.

Q. On this accounting on January 13, was there any provision made for your six per cent. interest or the extra one per cent? A. There was.

Q. In what way was that? A. It was included in the check for \$5628.

Q. How much was the interest and the one per cent? A. The interest was \$38.44 and the one per cent. was \$76.89.

Q. What had you done to cover that \$76.? A. I had gone over his shipping receipts, his evidence of shipping of the goods from factories.

233 Q. Did you go over his books? A. Only partially; I didn't go over his books entirely.

Q. What do you mean by that partially; did you go over them at all to acquaint yourself with the accounts? A. I accepted the accounts as he submitted them to me.

Q. You only went over then the accounts that he submitted to you? A. That's all.

Q. These accounts that were assigned? A. Yes, sir.

Q. And that's all you did? A. Yes, sir. That is not all I did. I went over his shipping receipts.

234 Q. What do you mean by going over shipping receipts? A. Examined them.

Q. The same shipping receipts that these accounts related to? A. Yes, sir.

Q. And that was on January 13? A. Yes, sir.

Q. Did you do that on January 5? A. Yes, sir.

Q. In reference to the accounts that were assigned on that day? A. Yes, sir.

Q. Did you have any talk with him about his business on the 13th as to why these accounts had not been paid? A. 13th of January?

Q. On the 5th of January? A. I did.

Q. What did he say? A. He spoke of slow collections the first of the year.

Q. Did you have any talk with him on the 13th, a further talk? A. No, sir. You have reference now to the December 16 assignment?

Q. To his business in general? A. No, sir, not on January 13.

Q. Didn't say anything about it at all? A. No, sir not about his business in general.

Q. Did you ask him if he wanted any more money? A. No sir.

Q. Did you say anything at all in reference to the maturing of the accounts being in April? A. I don't remember that I did. It was satisfactory to me. 236

Q. What is the actual amount that you claim that he owed you on January 18? A. I would have to figure it. Something under \$10,000.

Subscribed to before me this }
day of 1911. }

Referee in Bankruptcy.

Hearing adjourned to February 21, 1911, at 2 237
P. M.

238

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Bankruptcy.

In the Matter

*of*A. L. CANFIELD & COMPANY,
Bankrupt.

Before:

William H.
Willis, Esq.,
Referee in
Bankruptcy,
80 Wall
Street.

239

NEW YORK, FEBRUARY 21, 1911, 2 P. M.

HEARING ON RECLAMATION PROCEEDING
OF WILLIAM H. BURDEN.

NO APPEARANCES:

Hearing adjourned to February 24, 1911, 11.30
A. M.

240

UNITED STATES DISTRICT COURT

241

SOUTHERN DISTRICT OF NEW YORK

In Bankruptcy.

In the Matter

*of*ABRAM L. CANFIELD,
Bankrupt.

Before:
 William H.
 Willis, Esq.,
 Referee in
 Bankruptcy,
 80 Wall
 Street.

242

NEW YORK, FEBRUARY 24, 1911, 11:30 A. M.

HEARING ON RECLAMATION PROCEEDING
 OF WILLIAM H. BURDEN.

Proceeded pursuant to adjournment.

APPEARANCES:

MR. C. S. HOUGHTON, Receiver.

MESSRS. ENGEL BROS., Attorneys for Receiver, 243
 represented by

MR. ADOLPH ENGEL, Of Counsel.

MR. JOHN J. CRAWFORD, Attorney for Claimant.

MR. WILLIAM H. BURDEN, Claimant.

MR. S. J. ROSENBLUM, Attorney for Bankrupt.

244

William H. Burden—Re-direct.

WILLIAM H. BURDEN, re-called, testified as follows:

Re-direct examination by Mr. Engel:

Q. You testified at the last hearing that you examined some of the books of Mr. Canfield, is that correct? A. I only partially examined the books I said.

Q. What do you mean by partially? A. I examined—I didn't make a complete examination of the books.

245

Q. Well, can you give us any idea to what extent you made an examination of the books? A. I only gave them a slight examination, I would not call——

Mr. Crawford.—State what you did, Mr. Burden, just what you did.

A. I examined the vouchers and shipping receipts, vouchers for delivered goods, shipment of the goods.

Q. And do you want the Court to understand that vouchers are books? A. They are not books.

246

Q. Didn't you testify that you examined the books of Mr. Canfield? A. Only partially I said.

Q. What books did you examine, if any? A. The ledger; I don't claim I made an examination of it; what I did was to casually look at the books; that wasn't the time to examine the books.

Q. Can you describe Mr. Canfield's books in any way? A. I saw only his ledger and some of the original entries, the books of original entry.

Q. That is the only book you saw and examined, the ledger, is that correct? A. I don't claim at that time I examined the books, it was a very partial——

William H. Burden—Re-direct.

247

The Referee.—What did you do?

The Witness.—Examined the vouchers,
Your Honor.

Mr. Crawford.—So far as the books are
concerned state what you did with respect
to those books?

A. I don't claim I made an examination of the
books.

The Referee.—The question is what you
did, not what you say; what did you do?

248

A. I never examined the books except partially;
I don't claim I examined the books.

The Referee.—It isn't a question of what
you claim; what examination did you make
of the books.

Mr. Crawford.—Did you see any of the
entries?

A. I did.

Q. You say you examined the books partially;
what do you mean by that now? A. To see that
the accounts submitted to me agreed with the en-
tries on the books.

249

Q. So that all you did was to take the accounts
as you got them from Canfield and compare them
with the books, as you found them in the ledger?

A. Yes, sir.

Q. Did you examine the books at any time af-
ter that? A. No sir.

Subscribed to before me this}
day of 1911.}

250

Abram L. Canfield—Direct.

MR. ABRAM L. CANFIELD, bankrupt, called as a witness on behalf of the Receiver, being first duly sworn by the Referee, testified as follows:

Direct examination by Mr. Engel:

Q. Mr. Canfield, you are the bankrupt in this proceeding? A. I am.

Q. Do you know the claimant here, Mr. Burden? A. Yes, I know Mr. Burden.

251 Q. How did you make his acquaintance; under what circumstances? A. Mr. Burden was introduced to me by Mr. Koehler; Mr. Koehler is a broker, a money broker, 32 Broadway.

Q. Well, did Mr. Burden call on you at your place of business? A. Mr. Burden called upon me at my place of business with an introduction by Mr. Koehler.

Q. Did you have any conversation with him the first time he called on you with reference to the object or purpose of his call? A. Well, the purpose of his call—

The Referee.—Answer the question.

252 Q. Give us the conversation; did you have a conversation with him? A. I did.

Q. Will you state the conversation? A. Well, the purpose of—

Q. No, please, Mr. Canfield, tell us what Mr. Burden said and what you said and what anybody else said who was present at the meeting? A. I don't suppose I can repeat the exact words.

Q. In substance? A. That is, what I can give you; Mr. Burden's conversation was to seek entry into our business as a partner. He came there with that purpose through the introduction of

Mr. Koehler; it was to put money into the business, \$10,000, and so the conversation on his first call related to his becoming a partner in our business.

Q. Well, what happened after that; did Mr. Burden become a partner? A. He didn't become a partner.

Q. Did you then ask him to loan you \$10,000 or any sum of money? A. Mr. Burden's first talk was to become a partner into the business, to loan us \$10,000, or put \$10,000 into the business and to derive an income of \$250 per month for that interest, that \$10,000. He figured, and his proposition at that time was, that he was entitled to a 6 per cent. interest charge per year, and he talked about a 2 per cent. a month extra.

254

Q. Yes? A. Now, he talked about working an hour or two a day and thought that that might suit him. He asked at that particular time for a statement of our business which was handed to him.

Q. Was this all on the first meeting? A. This was the first conversation, I believe, that is what you are asking me.

Q. Yes? A. And the first call of Mr. Burden on us.

255

Q. Well, now, what happened after that; did Mr. Burden again call a few days after that? A. He went away and said he would come again, which he did a few days later.

Q. Did you have a conversation when he again called? A. I did.

Q. State the conversation, please? A. I said that we would not pay as much bonus as Mr. Burden asked for which was, understand, 6 per cent and 2 per cent. per month. We could not afford

256

Abram L. Canfield—Direct.

to pay as much as that for the money to be put into the business and Mr. Burden said also that he would not—he would withdraw his proposition relative to doing any work there; there was no work really that he could do, so the first proposition fell through. Now, another proposition was submitted by Mr. Burden in which he would simply loan us the money and take as security assigned accounts, and loan us \$10,000.

Q. Now, what was the conversation with respect to the loan of \$10,000?

257

Mr. Crawford.—I object to this on the ground that the negotiations of the parties are merged in the written instrument.

The Referee.—Overruled.

Mr. Crawford.—An exception.

Q. State the conversation? A. Why, then the proposition was put up to me by Mr. Burden that he loan \$10,000 and first asked for 2 per cent bonus. We said we could not afford to pay it, and then he agreed to loan us \$10,000—

258

Mr. Crawford.—I move to strike out what he agreed to do.

The Referee.—State what he said, in substance?

A. He said he would loan us \$10,000 on this basis; 6 per cent legal interest and 1 per cent per month, making in all 18 per cent.

Q. Did Mr. Burden use the words bonus of 1 per cent a month at the time you had this conversation? A. Yes.

Q. Did he say to you I want 6 per cent legal interest in addition to 1 per cent bonus every month for making this loan? A. Yes.

Abram L. Canfield—Direct.

259

Q. That was the language he used? A. Yes sir.

Q. What did you tell him then? A. Well, I said that we needed the money in our business and I agreed—

Q. What you said; did you tell him you would take that loan? A. Yes, and I took the loan.

Q. Didn't you at that time tell him that you would not like to pay that much bonus but that you were hard-pressed for money and could not help yourself?

Mr. Crawford.—Objected to as leading.

260

Q. What else did you say to him at that time?

A. That we needed the money; that is why we paid or agreed to pay this matter of bonus, 1 per cent per month.

Q. Was there anything said about being hard pressed for money? A. I said that we needed the money.

Q. But the words hard pressed weren't used? A. I can't recall that part.

Q. If I understand you correctly, before you—

Mr. Crawford.—I object to that form of questioning the witness.

261

The Referee.—Overruled.

Mr. Crawford.—An exception.

Q. If I understood you before you said Mr. Burden at first asked for 2 per cent bonus per month? A. Yes sir.

Q. And at the second meeting it was finally arranged you pay 1 per cent to which both of you agreed? A. Yes, sir.

Q. Who is Mrs. Herzog? A. My Secretary.

Q. Was she present at any of these meetings? A. Present at all of them.

262

Abram L. Canfield—Direct.

Q. She occupied the same room, the same desk?
A. Her desk adjoins mine.

Q. And all of these conversations and this agreement with respect to this loan were had within the State of New York? A. In the City of New York.

Q. 97 Beekman St? A. 97 Beekman St.

Q. Now, you did assign, by reason of that agreement certain accounts to Mr. Burden? A. I did.

263

Q. Among your—among those accounts was a claim in your favor against the United States Government, is that right? A. Yes.

Q. The Isthmian Canal Commission? A. Yes, sir.

Q. In the sum of \$2251.70, is that correct? A. Yes.

Q. This contract with the Government at the time of your assignment to Mr. Burden wasn't completed, was it? A. No, it was not.

Q. The United States Government had not at the time of the assignment issued a warrant? A. No.

264

Q. From the Treasury Department? A. No.

Q. Was that contract covering the assignment filed with the United States Government? A. No.

Q. I notice that the agreement in evidence which I show you bears the signature of two witnesses? (Paper shown witness.) A. Yes, Hess & Koehler.

Q. You will notice the agreement says S. Hess, Abram L. Canfield, Arthur J. Koehler, for William H. Burden. Was Mr. Hess and Mr. Koehler present at the time this contract was signed; were they both present at the same time? A. They were both present at the same time.

Abram L. Canfield—Direct.

265

Q. They were both present? A. Yes.

Q. After this agreement for the loan of this money was consummated did Mr. Burden tell you he would call on his lawyer and bring back the written agreement? A. Yes.

Q. Is that agreement, Exhibit 1, which I show you, the paper brought to you? A. Yes.

Q. Did you read that agreement? A. Well, I have only glanced it over.

Q. Well, glance it over; did you notice in that agreement something pertaining to services to be rendered on the part of Mr. Burden?

266

Mr. Crawford.—Objected to, what he knows is immaterial; there is the contract and it speaks for itself.

The Referee.—Overruled.

Mr. Crawford.—An exception.

A. Yes, at the time the agreement was—

Q. Did you notice it? A. Yes, at the time the agreement was—

Q. Did you notice it? A. Yes.

Q. Well, now, when you noticed that did you say to Mr. Burden—

267

The Referee.—Does he notice it now or, at that time; ask that

Q. At the time this agreement was brought to you I refer to? A. Yes, sir.

Q. And you looked at the agreement and you noticed the clause about services to be rendered? A. Yes, sir.

Q. What did you say to Mr. Burden? A. Just what?

268

Abram L. Canfield—Cross.

Mr. Crawford.—The same objection.*The Referee.*—Overruled.*Mr. Crawford.*—Exception.

A. I asked Mr. Burden just what he meant by that clause; why, he said that that was simply to get around the usury law; there were no services to be rendered at all; there were no services rendered.

269

Mr. Crawford.—I move to strike out no services rendered.*Mr. Engel.*—I consent.

Q. Did Mr. Burden render any services to you of any kind? A. No, sir.

Q. Did Mr. Burden ever examine your books? A. Not to my knowledge, no.

Q. Except at the time you gave Mr. Burden the assignment of the accounts and Mr. Burden examined your shipping receipts to ascertain whether you had shipped the goods, did he afterwards examine any shipping receipts or any books of yours? A. No, he never did.

270

Q. Did he ever render any other services to you of any kind? A. No, sir.

Cross examination by Mr. Crawford:

Q. You said you said to Mr. Burden you were hard pressed for money? A. I haven't used the words hard-pressed.

Q. What did you say to him about your necessities? A. That we needed the money and could use it.

Q. Did you tell him you were pressed for money? A. To the best of my knowledge I don't think the word pressed was used.

Abram L. Canfield—Cross.

271

Q. Well, you have already testified to that, haven't you?

The Referee.—He refused to testify about that.

Q. Did you say—? A. I have stated that I do not think the word hard-pressed was used at all; that we needed money; could use the money.

Q. Did you say you needed the money? A. Yes, sir.

Q. Is that your signature, Mr. Canfield (showing witness paper)? A. Yes, sir.

272

Q. That is the statement of the condition of your business that you delivered to Mr. Burden, is it not? A. It looks so to me, yes, sir.

Q. You delivered that to Mr. Burden at the same time or prior to the time that this contract was made? A. Yes.

Q. You did? A. Yes.

Mr. Crawford.—I offer the statement in evidence.

Mr. Engel.—Objected to as incompetent.

The Referee.—Overruled.

Mr. Engel.—An exception.

273

(Paper Marked in Evidence Claimant's Exhibit No. 1, February 24, 1911.)

Q. How many conversations did you have with Mr. Burden all together? A. I don't think I can remember that, sir.

Q. Well, how many can you remember? A. Half a dozen at least.

Q. Covering what period of time? A. From the time that I was introduced to Mr. Burden up to the present time.

274

Abram L. Canfield—Re-direct.

Q. Where were those conversations held? A. At 97 Beekman Street.

Q. You say Mr. Burden's first proposition was that he should become a partner in your business?

A. Yes, sir.

Q. And he was to contribute capital? A. Yes, sir.

Q. When was that proposition made? A. I can't give you the date—the first interview, yes, sir.

275 Q. And who was present at the time? A. My Secretary was present.

Q. Anybody else? A. There were other people in the office but they were not—they were helping around the business somewhere.

Re-direct examination by Mr. Engel:

Q. When you said no one else was present—you testified before Mrs. Herzog was present, did you not? A. Mrs. Herzog is present at all contracts—arrangements made by me; her desk is next to mine and she is supposed to be familiar with all such things.

276

Subscribed to before me this }
day of , 1911. }

REFEREE IN BANKRUPTCY.

Sadie Herzog—Direct.

277

SADIE HERZOG, called as a witness on behalf of the Receiver, being first duly sworn by the Referee; testified as follows:

Direct examination by Mr. Engel:

Q. Have you been in the employ of Mr. Canfield? A. Yes, sir.

Q. How long? A. 15 years.

Q. Up until what time? A. Oh, till—.

Q. The filing of the petition in bankruptcy? A. Yes, sir.

Q. Did you recall transactions had between Mr. Canfield and Mr. Burden with reference to a loan of money or an advance of money? A. Yes. 278

Q. Do you recall the first visit of Mr. Burden on Mr. Canfield? Do you recall a visit that Mr. Burden made to Mr. Canfield? A. Yes.

Q. Did you hear Mr. Burden having a conversation with Mr. Canfield? A. Well, I remember some conversation

Q. By the way, can you give us the date of that conversation or, as near as you can remember? A. No, I can't give the date.

Q. You recall about the time of the bankruptcy, don't you? A. Yes. 279

Q. Was it month before the bankruptcy, or two months before or six weeks? A. Why, I guess about 2 or 2½ months before; I don't know the exact time.

Q. Will you give us the conversation that you heard?

Mr. Crawford.—Objected to on the ground that the arrangements of the parties are all merged in a written statement.

The Referee.—Overruled.

280

Sadie Herzog—Direct.

Mr. Crawford.—An exception.

A. Well, Mr. Burden said to Mr. Canfield that he would like to become a partner in his business and he would loan him \$10,000, and for this loan he wanted 6 per cent and 2 per cent. besides; then Mr. Burden asked Mr. Canfield for a statement which was given to him.

Q. And what did Mr. Burden say? A. Then Mr. Burden said, as far as I can recall; he said he'd look the matter over and come back in the course of a few days and advise Mr. Canfield.

281

Q. Did Mr. Burden come back a few days subsequent? A. I think he came back in two or three days; I don't know; in about two or three days he came back.

Q. What conversation did you hear then? A. Well, he suggested another proposition to Mr. Canfield and Mr. Canfield would not accept that first one, but he suggested another proposition to Mr. Canfield.

282

Q. What did you hear? A. Then I heard Mr. Burden say to Mr. Canfield that he would agree to allow him \$10,000 on assigned accounts and for this loan he would agree to give him 6 per cent—Mr. Burden said this—6 per cent and 1 per cent as a bonus, which was to cover the—.

Q. Just give us the conversation?

Mr. Crawford.—She is giving the conversation.

A. That was the 1 per cent bonus.

Mr. Crawford.—Which was what, go on from where you were interrupted; which was to cover—.

Sadie Herzog—Direct.

283

A. To cover the bonus and usury charge.

Mr. Crawford.—I move to strike out usury charge; you didn't hear the word usury used did you?

A. Yes, I heard it; it was to cover the usury charge.

Q. You heard them use that word? A. I certainly did, yes. Then Mr. Canfield told Mr. Burden he didn't have any use for him in the office to do any work; we had no work for Mr. Burden in the office, and then—

284

Q. Are you referring to the conversation when Mr. Burden brought the agreement to Mr. Canfield? A. Well, this was the second time.

Q. Well, after the second time that you call it, did Mr. Burden call with an agreement?

Mr. Crawford.—Don't lead the witness.

A. I don't remember now.

Q. I show you this paper and I ask you if you ever saw that before? A. Yes, I saw that.

Q. Do you recall Mr. Burden bringing this paper to Mr. Canfield? A. Yes.

285

Q. Isn't that the time you refer to as to the conversation concerning the usury charge or bonus?

Mr. Crawford.—Objected to as leading.
The Referee.—Overruled.

Mr. Crawford.—An exception.

Q. Answer the question? A. I think it was.

Q. Isn't it a fact that Mr. Canfield asked Mr. Burden what was meant in this agreement con-

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Sadie Herzog—Direct.

cerning services and charges for services to be rendered by Mr. Burden?

Mr. Crawford.—Objected to as leading.
The Referee.—Sustained.

Q. What did you hear Mr. Canfield say concerning this agreement shown you? A. I don't remember.

287

Q. Well, did Mr. Canfield say anything about services or did Mr. Burden say anything about services to be rendered? A. Well, Mr. Burden said he would like to have about an hour's work to do in our establishment every day, and then Mr. Canfield told him we would not have any use for him there.

Q. Did Mr. Burden, as far as your knowledge goes, render any services to Mr. Canfield? A. No, he did not.

Q. Did Mr. Burden ever examine the books of Mr. Canfield? A. No, he did not.

288

Q. With the exception of the time that these assignments of accounts were made by Mr. Canfield to Mr. Burden, did Mr. Burden ever examine any shipping receipts in Mr. Canfield's place of business? A. Yes.

Q. When? A. At the time the statements were made up he wanted to see the shipping receipts covering all these different items on the statements and they were shown to him.

Q. That was at the time that these accounts were made up? A. At the time that those accounts were made up.

Q. Did Mr. Burden ever again after that examine any shipping receipts? A. No, he did not.

Cross examination by Mr. Crawford:

Q. Did he examine any of the shipping receipts on or about the 16th of December, 1910? A. The only time he ever examined any shipping receipts was when the statements were made up; I don't remember any dates.

Q. There were three different statements? A. Yes, sir, and at that time that the statements were made up he examined the receipts on each of those three occasions? A. Yes, I don't know whether 1910—.

Q. There were three separate occasions on which he examined the shipping receipts and compared them with the bills as you made them out? A. Yes, sir.

Q. Did he look at the ledger? A. No, he never looked at my ledgers; never asked to see my ledgers; he said to me the other day on the street—.

Q. Never mind what he did on those occasions? A. No, he never went through my ledgers.

Q. Didn't he ever look at any entries on the ledger? A. No, never on my ledgers, never.

Q. Where was the, describe the situation of the rooms at Mr. Canfield's place? A. Well, Mr. Canfield had a private office and I had a desk; one desk was directly in back of his, then I had another desk that was on the side.

Q. How far from Mr. Canfield's? A. Oh, about ten feet.

Q. Did you keep the books? A. Not all the time.

Q. There was another bookkeeper there? A. Yes.

Q. How much bookkeeping did you do? A. I took charge of the books after our bookkeeper left; and I was asked to take charge of the books the best I could.

Q. When did the bookkeeper leave? A. Well, I guess about a year ago; something around a year ago.

Q. And you had charge of the books all last fall? A. Yes, sir.

Q. Anybody else do any work on those books? A. Yes, I had an assistant.

Q. Didn't you have a bookkeeper's desk? A. I used the bookkeeper's desk sometimes, not always.

Q. Was not there a bookkeeper's desk in the place? A. Oh, yes.

293 Q. Where those books were kept? A. The books were kept in the safe.

Q. I mean during the day? A. They were kept on the desk.

Q. How far was that from Mr. Canfield's desk? A. That is about the same distance, well, a little further than my desk was away from his.

Q. About 10 feet? A. Yes, 10 or 12 feet.

Q. When Mr. Burden was there was the door of Mr. Canfield's office closed? A. The side door was and the front door was half open and half closed.

294 Q. And where were you at the time? A. At my shipping desk.

Q. You weren't in the room with them? A. No, I was at the shipping desk with the windows open.

Q. How far away was that? A. Directly in back of Mr. Canfield's desk there is a partition, a small partition and the windows were open, they are always open.

Q. Now, what do you mean by the windows closed and a partition between? A. The lower part is wooden and the other part is half; these windows are always open.

Q. Then, was your desk in the same room with Mr. Canfield's? A. No.

Q. It is on the other side of the partition? A. The other side.

Q. And he has a private room in which he has a desk for himself? A. Yes.

Q. And that was the situation last October? A. Yes.

Q. Last December? A. Yes.

Q. So that at the time that you say you overheard these conversations between Mr. Burden and Mr. Canfield you weren't actually in the room? A. No, I wasn't in the room.

Q. You were on the other side of the partition? 296
A. On the other side.

Q. Mr. Burden did talk with Mr. Canfield about having worked at Mr. Canfield's place? A. Yes, he certainly did.

Q. What he said he wanted to do was to have employment there, didn't he? A. Yes.

Q. And he wanted actually to do some work there, didn't he? A. Yes.

Re-direct examination by Mr. Engel:

Q. This partition you speak about, how thick was this? A. Oh, you could hear anybody, could hear anything. 297

Q. How thick was it about half an inch? A. An inch, half an inch, an inch.

Q. And your desk was close with the partition? A. Right up with the partition exactly.

Q. And Mr. Canfield's desk was close to the partition on the inside? A. Yes, sir.

Q. Practically set back to back? A. Yes, sir, back to back.

Q. And the windows were open? A. Yes.

Q. And you heard the conversation clearly? A. Yes, you can hear all that is said there.

298

Sadie Herzog—Re-direct.

Q. You said before you were with Mr. Canfield's business 15 years ago? A. Yes, sir.

Q. You were interested in his business, in what was going on? A. Always, when any contracts were made.

Q. You say you met Mr. Burden the other day? A. Yes.

Q. Did you have a conversation with him? A. Yes.

299 Q. What was the conversation? A. Mr. Burden asked on the street, said it was too bad he didn't look over our ledgers because the bonding company said it was a necessary thing. He met me at 84 William Street and he walked up the Street with me and said it was too bad he didn't look over our ledgers.

Q. His statement was that the Bonding Company required that he should do that work? A. Yes, he said the Bonding Company required that he should look over our ledgers.

Q. And he regretted that he hadn't done that? A. Yes.

300 Subscribed to before me this/
day of , 1911.

REFEREE IN BANKRUPTCY.

Mr. Crawford.—I would like to ask Mr. Canfield one or two more questions.

Abram L. Canfield—Cross.

301

ABRAM L. CANFIELD, recalled, testified as follows:

Cross examination by Mr. Crawford:

Q. When you delivered to Mr. Burden this statement in which you included \$33,552.13 as your liabilities you knew that you had outstanding indebtedness besides that, didn't you? A. I certainly would object to answering that question.

Q. On what ground? A. It has no bearing upon this matter.

Q. Is that your only ground that it has no bearing? A. It might incriminate me, believe is the way to—

Q. You put your refusal to state that upon the ground that the answer to my question might incriminate you; is that your objection?

Mr. Canfield.—(Addressing the Referee). I want to consult with my attorney first on that?

The Referee.—I will allow you to do that.
(Witness retires to an adjoining room with his counsel and returns.)

A. On the advice of counsel I will refuse to answer that question on the ground that it might incriminate me.

Mr. Crawford.—Will your Honor direct the witness to answer.

The Referee.—I decline to so direct.

Q. At that time you had outstanding other liabilities beyond the \$33,552.13? A. I refuse to answer on the same grounds as previously stated.

304

Mr. Crawford.—I offer in evidence the Bond referred to in the contract and which has been mentioned here by the witnesses.

(Bond Marked Claimant's Exhibit in Evidence No. 2, February 24, 1911.)

Subscribed to before me this)
day of , 1911.)

REFeree IN BANKRUPTCY.

Hearing adjourned to March 2nd, 1911, at 11:30
A. M.

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UNITED STATES DISTRICT COURT,

307

SOUTHERN DISTRICT OF NEW YORK.

In Bankruptcy.

IN THE MATTER

*of*ABRAM L. CANFIELD,
Bankrupt.

Before:
 William H.
 Willis, Esq.,
 Referee in
 Bankruptcy,
 80 Wall
 Street.

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New York, March 2, 1911, 11:30 A. M.

HEARING ON RECLAMATION PROCEEDING OF
 WILLIAM H. BURDEN.

Proceeded pursuant to adjournment.

APPEARANCES:

MR. C. S. HOUGHTON, Receiver.

MESSRS. ENGEL BROS., Attorneys for Receiver,
 represented by

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MR. ADOLPH ENGEL, Of Counsel.

MR. JOHN J. CRAWFORD, Attorney for Claimant.

MR. WILLIAM H. BURDEN, Claimant.

310

Arthur J. Koehler—Direct.

ARTHUR J. KOEHLER, witness, called on behalf of the claimant and being first duly sworn by the Referee, testified as follows:

Direct examination by Mr. Crawford:

Q. Mr. Koehler, I show you Claimant's Exhibit A, and ask you if you are the A. J. Koehler who has been referred to as the broker that negotiated this transaction between Mr. Burden and Mr. Canfield? A. I am.

311

Q. When did you first meet Mr. Burden? A. I think it was some time in April, 1910.

Q. How did you happen to meet him? A. I saw an advertisement of his in the Herald and I answered it.

Q. Is that the one you answered? A. Yes.

Mr. Crawford.—I ask that that be marked for Identification.

(Paper Marked for Identification Claimant's Exhibit No. 1, March 2, 1911.)

Q. After you saw Mr. Burden did you have a talk with Mr. Canfield? A. I did.

312

Q. What was said? A. I told Mr. Canfield I had a client who would lend him \$10,000 upon security provided he would get a position in his business which would bring him a weekly salary of \$50 a week, and Mr. Canfield said he could use a good man, and I arranged for a conference.

Q. Now, was anything said as to the nature of the duties that Mr. Burden could or would perform? A. Yes, Mr. Burden was to have work in the office, looking after the accounts and the credits and work pertaining to that particular line.

Q. Well, then, go on with your statement from that point; what more was said? A. Nothing much more at that time.

Arthur J. Koehler—Direct.

313

Q. Well, did Mr. Canfield say that he would accept the proposition? A. Well, he wanted to see the man first.

Q. Then, what did he say? A. I was to send him down and introduce him.

Q. How did the matter happen to go off? A. Mr. Burden—

The Referee.—What do you mean?

Q. Then, nothing came of that negotiation? A. Why, I did introduce Mr. Burden.

Q. At that time nothing came of it? A. No.

314

Q. Those negotiations weren't consummated? A. No, not at that time.

Q. How did it happen that it was not consummated? A. Mr. Burden wanted a later financial statement; the financial statement that I gave him.

The Referee.—Are you talking about this interview?

Mr. Crawford.—No, in his statement he said he went there with Mr. Burden; that wasn't consummated; now, I am asking him why it happened that it was not consummated.

315

A. Mr. Burden wanted a new financial statement, the financial statement that I showed him was about a year—he wanted a later one; if he got that later one and it was satisfactory he was willing to conclude negotiations.

Q. Was that statement rendered at that time? A. It was not.

Q. The matter then, was taken up subsequently? A. It was.

316

Arthur J. Koehler—Direct.

Q. Did you tell Mr. Burden anything about a bond which the Fidelity & Casualty Company was issuing? A. I did.

Q. Then, further negotiations were taken up with Mr. Canfield upon the basis of his giving the—giving one of these bonds? A. Yes, sir, a bond from the Fidelity & Casualty Company.

Q. And of his rendering a statement as of a more recent date? A. Yes.

The Receiver.—Let the witness tell.

The Referee.—Yes.

317

Mr. Crawford.—All right.

Q. Is the signature of Arthur J. Koehler on Claimant's Exhibit A, your signature? A. Yes.

Q. When was that made? A. On the 16th of December, 1910.

Q. Were you present at the time Mr. Burden and Mr. Canfield—where was the paper signed? A. In Mr. Canfield's office.

Q. Was it in a private office? A. Yes, his private office.

Q. Please state what took place at that time? A. I came in the office and found Mr. Burden sitting in the private office of Mr. Canfield. Mr. Canfield at that moment was on the floor somewhere attending to some business and Mr. Burden and I waited for him to come in. When he did come in Mr. Burden pulled out the contracts, there were three of them, I think, and gave one to Mr. Canfield and one to me to look over.

318

The Referee.—In triplicate?

The Witness.—Yes, sir.

The Referee.—Three contracts?

Mr. Crawford.—No, three copies of the same.

Arthur J. Koehler—Direct.

319

A. (Continued.) Mr. Canfield read his over, I read mine and Mr. Burden held one. After reading over the contract Mr. Canfield said "I guess this is all right," and started to sign them. After he signed them I witnessed them as per Mr. Burden's signature, and Mr. Canfield called in his bookkeeper, Miss Hess and she signed the others as witness for him.

Q. Where was Miss Hess at the time that she was called in? A. She was in the outside office.

Q. At any particular desk? A. I don't know whether she was at any particular desk; I think she was at the bookkeeper's desk. 320

Q. How far was that away from Mr. Canfield's private office? A. Oh, about 12 to 15 feet.

Q. Did Mr. Canfield ask of Mr. Burden what the purpose of the stipulation in this contract was with respect to services?

Mr. Engel.—Objected to as leading; ask for the conversation that took place at that time.

The Referee.—Anything said about—

Mr. Crawford.—I will ask the question.

321

Q. Was anything said at that time about—respecting the stipulation in the contract for compensation to be paid for services to be performed?

A. There was not.

Q. Was anything said about a bonus? A. There was not.

Q. Was the subject of usury mentioned? A. No.

Q. Was the word usury used? A. No.

Q. Was the words "usury charge" used? A. No.

322

Arthur J. Koehler—Cross.

Q. In any conversation that you had with Mr. Canfield was the subject of Mr. Burden becoming a partner mentioned? A. No.

Cross examination by Mr. Engel:

Q. Mr. Koehler, do you know Mr. Crawford, here, counsel for Mr. Burden? A. I never met him until recently.

Q. How recently did you meet him? A. Yesterday.

323 Q. Where? A. At my office.

Q. Did you have a conversation with him? A. I did.

Q. You were the broker for Mr. Burden or Mr. Canfield? A. For both.

Q. Did you receive any compensation for your services? A. I did.

Q. From whom? A. Mr. Canfield.

Q. Never from Mr. Burden? A. No.

Q. Now, what was the proposition that you told Mr. Burden about the loan of this money? When? A. The first time?

324 Q. That you spoke to him about it? A. Mr. Burden told me that he would lend a certain amount of money, from \$10,000 to \$20,000, in some good business upon certain terms, and those were that he would invest from \$20,000 to \$30,000—from 10 to 20 thousand dollars in a business provided he receive a position there that would pay him at least \$50 a week.

Q. Did you understand from Mr. Burden's conversation that he would not loan any money for a mere 6 per cent?

Mr. Crawford.—I object to that as calling for the understanding or conclusion of the witness and not for the facts.

Arthur J. Koehler—Cross.

325

The Referee.—Overruled.

Mr. Crawford.—Exception.

A. Well, I imagined he did want more inasmuch as he wanted \$50 a week salary.

Q. Do you believe now that the transaction as testified to by Mr. Burden was that he lend this \$10,000 to Mr. Canfield for the 6 per cent. legal interest?

Mr. Crawford.—Objected to.

The Referee.—Sustained.

326

Q. Now, you said before you understood Mr. Burden was to loan this money only in the event that he get a position that would inure to him \$50 a week? A. Yes, sir, that was the original proposition.

Q. Do you know whether or not Mr. Burden got a position with Mr. Canfield at that salary?

Mr. Crawford.—Objected to as irrelevant and immaterial.

The Referee.—Overruled.

Mr. Crawford.—Exception.

327

A. Well, I don't think he did.

Q. But you know he loaned this money? A. I do.

Q. Do you want to change your opinion now as to the compensations, the reasons for Mr. Burden loaning this money; if you know?

Mr. Crawford.—Objected to.

Mr. Engel.—Question withdrawn.

Q. You say this paper Exhibit 1 for Identification is what attracted you to Mr. Burden? A. Yes, sir, I answered that advertisement.

328

Arthur J. Koehler—Cross.

Mr. Engel.—I offer the paper in evidence.*Mr. Crawford.*—No objection.

(Paper marked Receiver's Exhibit No. 1 in evidence, March 2, 1911.)

Q. You said, Mr. Koehler, that you subsequently found out that Mr. Burden did not obtain a position with Mr. Canfield? A. Yes, I so understood.

329 Q. Well, now, after you found that out, didn't you then have another conversation with Mr. Burden with respect to some other form of making this loan? A. Before the contract was signed?

Q. Yes? A. Yes.

Q. Will you give us that conversation, please?

A. Well, Mr.—

Mr. Crawford.—I object to any conversation that took place between this witness and Mr. Burden as incompetent, irrelevant and immaterial and not within the issues in this proceeding.

The Referee.—Overruled.

Mr. Crawford.—Exception.

330

A. Subsequently I met Mr. Burden and I discussed with him the question of arranging this matter, provided—

Q. Give us the conversation, please?

Mr. Crawford.—He is trying to give it.

A. I am trying to give it to you.

The Referee.—What you said to Mr. Burden?

A. I said to Mr. Burden that provided the new statement was satisfactory to him, would he make some arrangement with Mr. Canfield provided Mr. Canfield would give a surety bond and Mr. Burden told me that the Fidelity & Casualty Co. Bond provided for certain work and contingencies and it seemed to him a satisfactory way of concluding business with Mr. Canfield, and if the statement was satisfactory he would make some arrangement with him.

Q. Didn't you say before that you told Burden about this bond proposition? A. Yes.

332

Q. Well, didn't you say a few moments before that that Mr. Burden told you about the bond proposition? A. I did not.

Q. You are sure about that? A. Pretty sure.

Q. Now, you say that Miss Hess wasn't in the room? A. Not in the private office.

Q. When this paper was signed? A. Not in the private office.

Q. You say she was about 10 or 15 feet away; is that right? A. But, she was called in, yes.

Q. What date is that when you called on Mr. Burden when this contract in evidence was signed?

A. I think it was the 16th of December.

333

Q. That is what you said before? A. Yes, that is what I said before.

Q. How do you fix that date? A. Well, my impression dates back to that time; that day that it was closed.

Q. Now, but how do you fix the date, the 16th, as the date this paper was signed? A. Well, from the time I got my commission or part of it.

Q. Have you any record of that? A. (Looking through a memo. taken from the pocket of the witness) I think I have. It was December 17th,

when I received the payment from him, the following day.

Q. You say you received the payment on December 17th; that was the following day? A. Yes, sir, that is my impression.

Q. Just look at this paper and see if it isn't the 14th of December when this paper was signed?

A. That is right.

Q. Then you are mistaken when you said before it was the 16th? A. It looks that way.

335 Q. Now, isn't it a fact, Mr. Koehler, that you were not present when this paper was signed?

A. It certainly is not a fact; it is a fact I was there and the paper was signed, because my signature is there.

Q. Is it not a fact that you signed this at your office as a witness to Mr. Burden's signature?

A. It is not, no.

Q. Did you see Mr. Canfield sign the paper?

A. I did.

Q. Can you explain to the Court the reason for signing Arthur J. Koehler for William H. Burden? A. I signed for him and Miss Hess for Canfield.

336 Q. How long were you in the office of Mr. Canfield when this paper was signed? A. Oh, probably half an hour.

Q. And you said before that all that transpired that day was in effect, that Mr. Burden called with three papers, you held one and Mr. Burden held one and Mr. Canfield held one, that they glanced over this paper and Mr. Canfield called in Miss Hess and the paper was signed; is that correct? A. I simply testified to the time that I was there on that day. Mr. Canfield signed the papers and Mr. Burden signed the papers. I

witnessed Mr. Burden's signature and then Miss Hess was called in and witnessed Mr. Canfield's signature.

Q. But you now say you were there a half hour?

A. I mean during the whole time.

Q. That was a half hour? A. I think so.

Q. And all that was said or done was the reading of this paper composed of 4 pages and the signing of them, and that took half an hour? A. I don't say all that was said and done. In the first place we had to wait for Mr. Canfield to come in and then the papers were signed, and then we may have talked of other matters; I don't know; I don't say that was all that was talked about, but I mean as far as that particular contract is concerned.

338

Q. (Repeated)? A. There was nothing spoken at all, except Mr. Canfield came in, read the paper and said it was all right.

The Referee.—Is that correct?

A. As far as I can remember.

Q. And that is as true as everything else you have testified to here? A. Whatever I have testified to is true.

339

Q. You say Miss Hess was the bookkeeper for Mr. Canfield? A. Yes.

Q. Don't you know that she was his private Secretary? A. I do not.

Q. Did you never discuss any business affairs with Mr. Canfield with Miss Hess? A. I did not.

Q. Did you never see her in his private office seated right next to him? A. No.

Q. Do you know how far Miss Hess's desk was from the desk of Mr. Canfield at that time? A. His private office?

Q. Yes? A. I figured it to be 12 or 15 feet.

Q. Are you now referring to the bookkeeper's desk or Miss Hess's? A. Well, either one were about that same distance; one is this way and one is that way.

By the Receiver:

Mr. Houghton.—Could I have the privilege of asking him a couple of questions?

The Referee.—I think so, yes.

Q. Mr. Koehler, you had had prior transactions with Mr. Canfield, had you not? A. I had, yes.

Q. In respect to obtaining loans? A. Yes.

Q. But you had never met Mr. Burden until you saw this advertisement in the paper? A. Correct.

Q. At the time you saw this advertisement in the paper you knew that Mr. Canfield was in the market for a loan, did you not? A. I did.

Q. He had already told you so? A. Yes.

Q. And had he told you why he wanted the loan? A. Why, yes.

Mr. Crawford.—I object to what Mr. Canfield said to Mr. Koehler before Mr. Koehler became acquainted with Mr. Burden.

The Referee.—I don't see the importance of it.

Mr. Crawford.—It does not seem to be relevant or material.

Mr. Engel.—Question withdrawn.

Q. Now, after you had seen this advertisement you called upon Mr. Burden? A. No, he called upon me. I wrote him.

Q. You wrote him to call upon you? A. Yes.

Q. Now, what was the first thing you said to him about Mr. Canfield? A. Well, I gave him—

Q. Say what you said as near as you can remember; as near as you can remember what did you say? A. Well, I had a half a dozen different concerns that I could use the money for, and I mentioned the names of them and Mr. Burden said to me that he did not want to lend his money to any Jewish concerns, only wanted to lend it to Christian concerns, and then I brought up Mr. Canfield's business.

344

Q. What did you say to him about it? A. I told him I had been doing business with Mr. Canfield for some time, he had been in business for a great many years and bore a very excellent reputation and I thought it would be a good opportunity for him to make an arrangement with Mr. Canfield. I showed him the statement that I had on file in my office, and he looked it over and thought it was all right and said that he would like to take the matter up with Mr. Canfield upon a basis where he could get—

Q. Which you have testified to? A. Yes.

Q. Now, did you send him to Mr. Canfield? A. 345
I did.

Q. With one of your cards? A. I did, yes.

Q. But you were not present at that interview, were you? A. I wasn't.

Q. And so you, of course, do not know what took place at that time? A. I do not except generally.

Q. Now, then, after the interview, did Mr. Burden come to see you again? A. He did.

Q. What did he say? A. He said that he would be prepared to go on and do business with Mr.

Canfield, provided he gave him, got him up a statement.

Q. Did he say anything about getting a position there? A. Yes.

Q. What did he say? A. He wanted a position there and he wanted to receive a salary of \$50 a week.

Q. So that that was the second time he said he wanted a position there and wanted \$50 a week? A. Oh, yes, it was his idea all the time.

347 Q. Now, then, did you again send him to Mr. Canfield? A. No, not for some time after that.

Q. How long afterwards was it? A. Oh, it might have been 5 or 6 weeks.

Q. Had you seen Canfield in the mean time? A. Oh, yes.

Q. And Burden in the meantime? A. Yes.

Q. And had you had any conversation with him about the loan? A. To Mr. Burden?

Q. Yes? A. Yes, I seen him about some other concerns.

Q. You did? A. Yes.

Q. And did he tell you why he didn't take up the first proposition? A. Yes.

348 Q. What did he say? A. He wanted to have another statement and as soon as he got that other statement and it was satisfactory he would go ahead with Mr. Canfield.

Q. So that during the 5 weeks interim no statement was given, as far as you know? A. Yes, there was none given.

Q. Now, after the conversation about the statement did you send him again to Mr. Canfield? A. I did.

Q. And what was the conversation leading up to his going to Mr. Canfield, after 5 weeks? A.

The conversation between Mr. Burden and myself?

Mr. Crawford.—I object to that, your associate has gone over that fully.

A. Well, Mr. Burden had been to the Fidelity Company and seen the bond and he said under that, this bond, he thought probably some arrangement could be made with Mr. Canfield provided he was willing to pay him so much for his services—one per cent per month on the money he advanced.

350

Q. How much? A. 1 per cent per month on the money he advanced.

Q. Did you go with him to see Mr. Canfield? A. I don't think I did.

Q. Do you know whether he did go and see Mr. Canfield? A. He said so.

Q. But you don't know what that conversation was? A. No.

Q. Now, after he had been to see Mr. Canfield did you again see Mr. Burden? A. I think so.

Q. Can you tell us about what date this was, or how long prior to the signing of the contracts? A. Some time towards the end of November.

351

Q. Did you see Mr. Burden after he had called upon Mr. Canfield? A. I think I did.

Q. And what did he say? A. He said that—well, this is one of the times anyhow; he said he thought he and Mr. Canfield would get together.

Q. Was anything said that you remember? A. Why, no, I can't remember anything special.

Q. Was there any further conversation as to the 1 per cent? A. No, we had talked about that before and I had discussed the terms with Mr. Canfield and Mr. Canfield was satisfied and Mr. Burden seemed to be satisfied.

Q. Well, tell me what the discussion was about, the 1 per cent; this is the first time we have heard you talked with Mr. Canfield about the 1 per cent?

A. I told Mr. Canfield what the terms were going to be, of course.

Q. What did you say? A. I told him Mr. Burden wanted 1 per cent a month to cover his services in the matter as provided in the Fidelity & Casualty Bond.

353 Q. That was after you had seen the Fidelity & Casualty Company Bond? A. Well, I don't know whether I had seen it but I knew what the terms called for; I think I saw it because I discussed it with other clients.

Q. Had you discussed it with Mr. Burden? A. Yes.

Q. Is it not a fact that you were the first one that told Mr. Burden what the terms of the Fidelity Bond would be? A. In general terms I told Mr. Burden that the Fidelity Bond guaranteed the honest turning over of the money by the collector and also guaranteed the sales; that is what I told him.

354 Q. Did you tell Mr. Burden that you had found out that there was no place for Mr. Burden that the bond provided for certain services for which he could charge 1 per cent. extra in addition to the 6 per cent? A. I don't think that I told him that.

Q. Did you suggest in any way to him a way by which the 1 per cent extra could be charged? A. I did not.

Q. And you didn't discuss that with him in connection with the Fidelity Bond? A. The ways and the wherefores why 1 per cent would be charged?

Arthur J. Koehler—Cross:

355

Q. Yes? A. No, I don't think I did.

Q. But there was some conversation between Mr. Burden and yourself and Mr. Canfield in relation to the extra one per cent? A. I told Mr. Canfield it would cost him that much money.

Q. And were you the first one that told Mr. Canfield that? A. I was.

Q. Now, what led up to the discussion of the 1 per cent with Mr. Canfield? A. Why, naturally, Mr. Canfield wanted to know what it was going to cost him; he paid more money on previous loans.

356

Q. Never mind about previous loans; about this loan; what led up to your telling Mr. Canfield he would have to pay 1 per cent extra? A. What led up to the facts? I told him the conditions on which the arrangement could be made with Burden.

Q. What were those? A. That it would cost him on \$10,000 \$1,800 a year.

Q. Did you explain how it would cost him that? A. No, I told him that is what it would cost him.

Q. Without explaining the details of it? A. No.

Q. Now, who told you or, what led you to make that statement to Mr. Canfield? A. Because Mr. Canfield wanted to know what it was going to cost him always when I made a loan for him.

357

Q. Did you make that statement on your own initiative or because of your talk with Mr. Burden? A. Certainly Mr. Burden told me what it was going to cost before I told Mr. Canfield, otherwise I would not have known it.

Q. Now, did you have any talk with Mr. Burden about the contracts or, the way that they should be drawn up? A. No.

358

Arthur J. Koehler—Cross.

Q. Did you have a talk with Mr. Canfield about the way the contracts should be drawn up? A. No.

Q. Did you know who was to prepare the contracts? A. Why yes, Mr. Burden told me his lawyer.

Q. But you had no talk either with Mr. Canfield or Mr. Burden as to what the contents of those contracts should be or the terms? A. I talked it over with Mr. Burden in this way; that he told me that the Fidelity Company insisted upon having a contract drawn in a certain way, that he had to have the contract drawn to conform to their views.

Q. Did you see Mr. Canfield between the time that you went to him and told him what it would cost him to get this money and the time that he signed the contract? A. I think I did several times, yes.

Q. And had talks with him about it? A. Probably.

Q. But you don't recall now what the purport of the conversation was? A. No.

Q. Did you have a conversation with Mr. Burden, interviews with Mr. Burden in the interim between the time you told Mr. Canfield what it would cost and the time the contracts were sold? A. I think I did.

Q. Was that the time you talked about the way the contracts should be drawn up? A. I didn't tell him how the contracts should be drawn up because I had no—that was a matter outside of my province.

Q. But, did you discuss the terms at all? A. I think I did, generally.

Q. But you don't recall now what they were? A. No.

William H. Burden—Direct.

361

Q. You don't know how many times Mr. Burden saw Mr. Canfield when you were not present? A. No, I haven't the slightest idea.

Q. Did you have any talk with the members of the Fidelity & Casualty Company? A. No, I never met them.

Q. Did you ever see the bond of the Fidelity Company in this matter? A. No, I didn't, I never saw—

Q. Was the bond in the office of Mr. Canfield at the time the contract was signed? A. I don't know.

362

Q. Did you see it? A. I did not.

Q. Was there anything said by Mr. Burden or Mr. Canfield about the bond at the time this contract was signed? A. I think that Mr. Burden said that we would have to take those contracts to the Fidelity Company so as to have the bond issued.

Q. That is all you remember about that? A. That is all I remember about that just now, yes.

Q. So that the contracts were signed, as far as you know prior to the time that the bond was signed. A. That is my impression.

363

Subscribed to before me this {
day of 1911. }

REFEREE IN BANKRUPTCY.

WILLIAM H. BURDEN, re-called, testified as follows:

Direct examination by Mr. Crawford:

Q. Mr. Burden, at any conversation with Mr. Canfield did you ever say to him that you wished

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William H. Burden—Direct.

to become a partner in his business? A. I did not.

Q. Or to become a partner with him in any respect? A. I did not.

Q. Was the subject of your becoming a partner in his business or with him in any way ever mentioned? A. No.

Q. Did Mr. Canfield at any time ever ask you what the purpose in the stipulation in the contract Exhibit A with respect to the 1 per cent. was for? A. No.

365 Q. Did you ever say to Mr. Canfield that that was for a bonus? A. No.

The Receiver.—I object because he said Mr. Canfield never spoke to him about the 1 per cent; I think the witness is precluded.

The Referee.—Overruled.

The Receiver.—An exception.

Q. Did you ever say to Mr. Canfield that that was to cover a usury charge or usury? A. I never did.

366 Q. Was the word usury ever used in any conversation that you had with Mr. Canfield? A. It wasn't.

Q. Was the word bonus ever used? A. No, sir.

Q. Did you ever say to Mr. Canfield that there were no services to be rendered? A. No, sir.

Q. Did you ever say to Mr. Canfield that you wanted 2 per cent per month for the use of the money? A. I did not.

Q. Did Mr. Canfield ever say to you that he needed the money? A. He said he could use the money.

Q. What did he say in connection with his use of the money? A. He said he wanted to increase

his business, he could increase his business by the having of it.

Q. Upon cross examination you stated that you made a partial examination of the books; now please state just what you did? A. I compared the statements of accounts with the ledger and also compared the different shipments in the statements with the shipping receipts and invoices.

Q. When was that done? A. That was on the 16th of December.

Q. How long were you occupied with that on the 16th of December? A. Pretty much all day; I commenced about 10 o'clock in the morning and worked until 6 o'clock in the afternoon, save half an hour for lunch. 368

Q. Did you make any further examination of any sort or comparisons? A. I did, in January.

Q. Yes, well, on what date in January? A. January 5th.

Q. What did you do on January 5th? A. Examined the shipping receipts and invoices of shipments to Canfield.

Q. How much time did that take on the 5th of January? A. I worked about half a day.

Q. Did you make any further examination or comparisons? A. Yes, on the 13th of January I made another examination. 369

Q. And what did you do then? A. Examined the shipping receipts for the shipments embraced in the statements of account that he assigned to me.

Q. How much of your time did it take on the 13th of January? A. About half a day.

Q. Before executing the contract with Mr. Canfield did you make an estimate of the amount of time that it would require for you to examine the

shipping receipts covering the shipments in the accounts to be assigned and make at least monthly an examination of the accounts of Mr. Canfield which should embrace a complete examination of the books, accounts and vouchers of Mr. Canfield as respects the accounts covered under the assignment and a strict comparison between all unpaid accounts as such accounts appeared on the records of Mr. Canfield and as such accounts appeared on the books of original entry; I ask you if you made such an estimate? A. Yes, sir.

371 Q. What was your estimate at that time; how did you make it up? A. I estimated that the work of examining the books and shipping receipts required, would take from 5 to 6 days each month.

Q. On what basis? Well, state how you made up your estimate; how you got it out? A. There was a further answer to that.

Q. Go on and state? A. I said 5 or 6 days.

Q. Now, state how you made up that estimate?

Mr. Engel.—I object to what the witness thought it would take him.

372 A. Under the requirement of the bond I estimated in addition to the 5 or 6 days that was mentioned that there was a possibility that I would be required to give considerable additional time for the reason that in case the accounts were not paid promptly I would have to give notice to the debtors under the requirements of the bond.

The Receiver.—Objected to as not competent.

The Referee.—Overruled.

William H. Burden—Direct.

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Q. Go on, Mr. Burden? A. That in that case I would have to notify the debtors of the assignment to me, and it was required that I should do that service by registered mail. I would also have to take up the collection of the accounts, which would involve additional work and the time and trouble.

Q. Then, now, you said it would require—now, how did you arrive at your estimate that it would take from 5 or 6 days in each month to make the examination prescribed by the contract and the terms of the bond? A. From my talks with Mr. Canfield regarding the accounts I estimated that they would average about \$100 each; that there would be embraced in the accounts, some of them, several charges for shipments; that upon an advance of \$10,000 at 75 cents on the dollar on the accounts there should be at least 100 accounts. Upon this basis I estimated that it would require the time stated in the previous answer; also of additional time under certain circumstances.

374

Q. At the time of the making of this contract did you intend this charge of 1 per cent which is spoken of in the contract as compensation for labor and services; did you intend that that should be a charge for interest? A. No, sir, I did not.

375

Q. Had you at any time any intention to charge more than 6 per cent for interest on the advance? A. No, sir.

Q. And that was intended by you to be a charge for services exactly as it is stated in the bond? A. It was.

Q. Was that on your part intended as a subterfuge to cover any usury charge? A. It was not.

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William H. Burden—Direct.

Q. Was that inserted there in perfect good faith? A. It was.

The Receiver.—All this testimony is under our objection.

377

Q. How did you—why was the compensation for services measured by a percentage on the amount of the outstanding advance— A. The work to be performed depended almost entirely on the number of accounts and the amount of them, and it would be the fairest and most equitable way of computing the compensation by a percentage upon the amount of the accounts outstanding and uncollected.

Q. Prior to the making of this contract with Mr. Canfield had you had any experience in the way of examining books and vouchers? A. I had.

Q. What experience did you have? A. I had had almost a lifetimes's experience as a bookkeeper and accountant.

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Q. Well, state in a little more detail what that experience was? A. Well, I was a bookkeeper a great many years and after I gave up actively keeping the books I still retained my connection as head bookkeeper for many more years; I was general office manager at the same time and cashier.

Q. With what concerns were these? A. My first bookkeeping was as Assistant Treasurer of the Central Railroad of Georgia.

Q. Then what concerns were you connected with? A. After that I was connected as bookkeeper for Ross & Coleman of Macon, Ga.

Mr. Engel.—We will concede that he is an expert bookkeeper and accountant.

Q. You were at one time President of the American National Bank of Macon, Ga? A. I was.

Cross examination by Mr. Engel:

Q. Now, Mr. Burden you say you examined these books 3 times, is that correct? A. No, sir, I didn't say I examined them three times; I don't think I said that.

Q. How many times do you say you examined these books? A. I compared the statement that one time with the books, the statement of December 16th.

380

Q. Was that the only time? A. Yes, sir.

Q. Weren't you required under the conditions of the bond to make a thorough examination of the books? A. I was.

Q. But you did not? A. The time had not arrived for doing so.

Q. You haven't done so? A. Not as yet, no sir.

Q. Now, Mr. Burden you made this loan to Mr. Canfield for profit, did you not, you wanted to make some money on your own money? A. I wanted the interest and an additional percentage for my services as required—

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Q. But you made this loan for the purpose of making this 6 per cent interest? Isn't it; this loan of \$10,000? A. Yes, sir.

Q. Now, then, let me ask you, you testified at a previous hearing that you borrowed this money? A. I did temporarily, yes sir.

Q. From whom did you borrow this money? A. The Corn Exchange Bank.

Q. Weren't you required to pay them 6 per cent interest for that same amount of money? A. I got it for less.

Q. How much? A. 5 per cent.

Q. So now you want to change your testimony to say you made this loan for a profit or 1 per cent or 6 per cent? A. What question do you ask me; I don't see.

Q. Is it not a fact that if you paid the Corn Exchange Bank 5 per cent for the use of this money all you made was 1 per cent? A. I was to get 6 per cent for my money; what I got it for was a different matter.

383 Q. Answer my question? Is it not a fact that you got from Mr. Canfield as you contend, 6 per cent and paid 5 per cent to the Bank for the same money, is that right? A. I was paying 5 per cent to the Bank.

Q. So that all you claim you made then, in your testimony, is 1 per cent for loaning this money to Canfield, isn't that correct? A. Not quite 1 per cent; yes a little over 1 per cent.

Q. In what manner is it not 1 per cent? A. I paid 5 for it and was getting 6.

Q. Then all you made was 1 per cent? A. It was for the time.

384 Q. It is correct? A. 1 per cent and a fraction over.

Q. Then, all you say you made is 1 per cent and a fraction over? A. The difference between 5 and 6.

Q. So that when you testified in this proceeding that you made this loan for a profit of 6 per cent are you mistaken? How long was this loan outstanding with the Corn Exchange Bank of yours? A. It was on demand.

Q. How long is it outstanding, please answer my question?

William H. Burden—Cross.

385

The Referee.—How long remain unpaid?

A. I paid half in a few days and the other is still owing.

Q. Did you hear Mr. Crawford state to us at the previous hearing we don't want long terms in this case we want to close this matter because Mr. Burden has to pay his bank, must return the money to the bank? A. You didn't ask me the question; I didn't hear that.

Q. Did you hear Mr. Crawford say words to that effect? A. I didn't hear that.

386

Q. Did you hear Mr. Crawford give any reasons for having a speedy termination of this examination? A. I did not.

Q. Did Mr. Crawford make any request for a speedy termination of this examination at any time? A. I don't remember to have heard him.

Q. You don't remember hearing anything of that? A. No.

Q. Is any part of that loan from the Corn Exchange Bank still outstanding? A. Half is still outstanding.

Mr. Crawford.—I offered previously, Mr. Referee, some statements of the accounts assigned, delivered by Mr. Canfield to Mr. Burden. They were objected to at the time because the original assignments were in evidence.

387

Now, it has been attempted to be brought out in cross examination here that the accounts that Mr. Burden took under these assignments were only to run a few days. These, if you look at them, show the due dates as you see of April 1. I want to offer

388

those again for that purpose. They have been excluded but in view of the testimony that has been brought out, I want to put them in for that purpose. List furnished by Mr. Canfield at the time by him showing the due dates of those accounts, not that they were short time accounts but were to run for four months.

Mr. Engel.—I don't object.

389

Mr. Crawford.—I offer in evidence the original list of accounts delivered by Mr. Canfield to Mr. Burden on the 5th day of January, 1911, and headed List of Accounts this Day, January 5th, sold and assigned by A. L. Canfield to W. H. Burden, etc.

The Referee.—For the sake of convenience put them all in at once.

Mr. Crawford.—I offer in evidence the paper signed by A. L. Canfield and delivered by him to William H. Burden on January 13, 1911, and headed List of Accounts this Day Sold and Assigned by A. L. Canfield to W. H. Burden, etc.

The Referee.—An absolute sale of the accounts?

390

Mr. Crawford.—Yes sir, the absolute assignment of the accounts? But there was a stipulation that when the accounts were collected Mr. Canfield had an equity in the balance that might be due afterwards.

I also offer in evidence the original paper delivered by A. L. Canfield to William H. Burden on December 16, 1910 headed List of Accounts this Day Sold and Assigned by A. L. Canfield to W. H. Burden.

(Papers Marked Claimant's Exhibit No. 2 in Evidence, March 2, 1911.)

Mr. Crawford.—I will stipulate on the record that the witness Herzog is the same as C. S. Hess; is the S. Hess whose name appears as the witness on Claimant's Exhibit A, she having been married since that time. 391

Subscribed to before me this }
day of 1911. }

REFEREE IN BANKRUPTCY.

Hearing adjourned to March 6, 1911, 12:00 M.

392

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394

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK,

In Bankruptcy.

In the Matter

*of*A. L. CANFIELD,
Bankrupt.Before:
William H.
Willis, Esq.,
Referee in
Bankruptcy,
80 Wall Street.

395

New York, March 8th, 1911, 12 M.

HEARING ON RECLAMATION PROCEEDINGS OF
WILLIAM H. BURDENPROCEEDED PURSUANT TO ADJOURN-
MENT.

NO APPEARANCES.

396 Stipulation admitting in evidence schedules of
the bankrupt's indebtedness signed by counsel for
the claimant and the Receiver filed.

Schedules marked

(Claimant's Exhibit 3, March 2, 1911).

HEARING CLOSED.

(Endorsed:)—In the District Court of the United
States for the Southern District of New York.—
In Bankruptcy.—In the Matter of Abram L.
Canfield, Bankrupt.—Before William H. Willis,
Esq., Referee in Bankruptcy.—Minutes of
Hearing on Reclamation Proceeding of William
H. Burden.

Exhibit A, February 7, 1911.

397

This Exhibit is the same paper as Exhibit C annexed to the Petition.

Exhibit B, February 7, 1911.

This Exhibit consists of 46 separate papers, one of which was in the following form:

Monthly Statement.

Telephone 1765 Beekman. 398
 Bought of A. L. CANFIELD,
 97 Beekman Street.
 New York, , 191 .
 M. . . . H. S. Landsman & Son,
 Danbury, Conn.
 Terms, Net 60 days, 2 off 10.
 1910.

Aug. 10	34.90	
Sept. 8	110.38	
Oct. 21	13.44	
Nov. 4	36.60	
16	40.50	
30	1.00	236.82
	<hr/>	399

For and in consideration of the sum of One Dollar and other good and valuable considerations to me in-hand paid by William H. Burden, of the City of New York, the receipt whereof is hereby acknowledged, I do hereby sell, assign, transfer and set over unto said William H. Burden, the account and claim against H. S. Landsman & Son, Danbury, Ct., amounting to \$236.82 hereto attached, and the money to be paid thereon; and I

400 do hereby represent that there has been no previous assignment of said account; that the whole amount thereof is just and true; that there are no defenses or counterclaims thereto; that no payments have been made thereon, and that the goods referred to in said account have been shipped to the debtor and have been accepted by him.

IN WITNESS WHEREOF, I have hereunto set my hand the 4th day of January, 1911.

A. L. CANFIELD.

401 The other 45 papers included in the Exhibit were in the same form, except as to the names of the debtors, the items and amounts. The whole number of items included in the 46 papers is 239.

Exhibit E, February 7, 1911.

This exhibit consists of 63 separate papers, all in the form set forth in the abstract of Exhibit B, but differing as to the names of the debtors, the items and amounts. The whole number of items included in these 63 papers is 225.

402

Exhibit 1, February 24, 1911.

A. L. CANFIELD

Statement of Business

November 25th, 1910.

ASSETS.

Cash on hand,	\$ 110.00
Cash in bank,	6,105.41
Bills Receivable,	15,728.14

Accounts " ,	39,810.30	403
Mdse. on hand cost,	22,012.18	
Real Estate	5,000.00	
Patterns, &c.,	1,500.00	
Fixtures,	1,500.00	
Stock Holdings,	12,500.00	\$104,266.03

LIABILITIES.

Owe for merchandise and notes not due 33,552.13

	Surplus	70,713.90
Losses for year	375.98	
Business Increase	20%	404
Net Gain for year	5,100.00	
Insurance Carried	21,500.00	

I, ABRAM L. CANFIELD, do hereby declare that the above is a just and true statement of the condition of my business on the 25th day of November, 1910; that since said date there has been no change by which the condition of said business has become less favorable; and that this statement is made as an inducement to William H. Burden to enter into the contract dated this day.

Dated, New York, December 14th, 1910.

A. L. CANFIELD. 405

406

Exhibit 2, February 24, 1911.

ASSIGNED-ACCOUNTS BOND.

THE FIDELITY AND CASUALTY COMPANY

OF NEW YORK,

Home Office, 92 Liberty Street, New York City.

No. 409071

THIS BOND WITNESSETH:

407

WHEREAS, Abram L. Canfield of 97 Beekman St., New York City, hereinafter called the Principal, has entered into an agreement with William H. Burden, of 612 West 140th St., New York City, hereinafter called the Obligee, a copy of which is attached hereto and made a part hereof:

408

NOW, THEREFORE, in consideration of a certain premium, The Fidelity and Casualty Company of New York, hereinafter called the Company, does hereby agree that it will reimburse the Obligee for the loss, not exceeding Seven Thousand Five Hundred dollars, of any money or other personal property—(1) through the sale, assignment, pledge or transfer under the said agreement by the Principal to the Obligee, during the term of this bond, of any account wholly or partly fictitious; (2) through the failure of the Principal during the term of this bond to deliver to the Obligee all money and other property received by the Principal during the said term on accounts sold, assigned, pledged, or transferred under the said agreement.

The foregoing agreement is subject to the following conditions:

I. The term of this bond begins on the 15th day of December, 1910, at noon, standard time at the Obligee's address hereinbefore stated,

and ends on the 15th day of December, 1911, at noon, standard time at the said address. 409

2. The liability of the Company under this bond shall not exceed the amount above written, whether the loss shall occur during the term above named, or during any renewal or renewals thereof, or partly during the said term and partly during any renewed term or terms.

3. The Company may at any time terminate its liability under this bond as to future acts of the Principal by a written notice, served on the Oblige, or sent by registered mail to the Oblige at the address hereinbefore stated, at least ten days before the cancelation takes effect. In case of such termination the unearned part of the premium shall be returned to the Oblige at the expiration of all liability hereunder. The Company's check served on the Oblige, or sent by registered mail to the Oblige at the address hereinbefore stated, shall be a sufficient tender of the said unearned premium. 410

4. If the Oblige shall learn that the Principal or any one connected with the Principal is not observing in good faith the conditions of the said agreement with the Oblige, the Oblige shall immediately give the Company in writing at its home office the fullest information obtainable at the time, and shall make no further payments or advances to the Principal, and shall take all steps that are proper for the protection of the interests of the Oblige and the Company. Affirmative proof of loss under oath, together with full particulars of such loss, shall be filed with the Company at its home office within three months after the discovery of such loss. 411

5. In the event of a claim under this bond the Oblige, whenever required by the Company to

- 412 do so, shall give the Company all the information and evidence possessed by the Obligee, and shall, at the request and cost of the Company, aid in securing information and evidence, and shall render all assistance (other than pecuniary assistance) that the Obligee can render, for the purpose of bringing to justice, prosecuting, and convicting criminally the Principal, or any one connected with the Principal, and for the purpose of enabling the Company to procure reimbursement from the Principal, or from any one connected with the Principal, or from the estate of the Principal or of any one connected with the Principal,
- 413 of any loss, damage, or expense sustained by the Company under this bond.

6. Upon the discovery by the Obligee of any dishonest act of the Principal, or of any one connected with the Principal, this bond shall terminate as to any act of the Principal thereafter.

7. The Obligee shall duly observe and enforce all the provisions of the said agreement, except as such provisions may conflict with the following conditions, namely: a. The Obligee shall require the Principal to state in writing at the time of assigning each account the date when the payment of such account is due, and if the payment of any account is not made within twenty days of the date that such payment is due, the Obligee shall immediately thereupon make demand by registered mail upon the debtor for the amount due; b. The Obligee shall require the Principal to file with the Obligee in connection with each account a certificate signed by a responsible official or employee of the Principal stating that the account referred to in the certificate represents a bona-fide sale, and that the merchandise concerned with the account has prior to the signing of the
- 414

certificate, been shipped to the customer named in the account; c. The Obligee, at least monthly, shall make an examination of the accounts of the Principal which shall embrace—(1) a complete examination of the books, accounts, and vouchers of the Principal as respects the accounts covered under the said agreement; (2) a strict comparison between all unpaid accounts as such accounts appear on the records of the Obligee and as such accounts appear in the books of original entry of the Principal. 415

8. If the Obligee shall at the date of this bond or at any time thereafter hold in addition to this bond any guarantee, bond, or other security, whether valid or not, against loss by reason of any default of the Principal covered by this bond, the Company shall not be liable hereunder for a larger proportion of any loss than the proportion that the amount of this bond bears to the total amount of security against the said loss; but this condition shall not apply to agreements of indemnity or bonds of indemnity executed and delivered to the Obligee by any person, persons, or corporation not engaged in the business of suretyship or insurance; provided that the Company shall be subrogated to all rights of the Obligee against any such person, persons, or corporation to the amount of any payment made by the Company; and provided further that the Obligee shall execute all papers required for such subrogation and shall co-operate with the Company to secure to the Company such rights. 416 417

9. Legal proceedings for recovery hereunder may not be brought until after three months from the date of filing proofs at the Company's home office, nor brought at all unless begun within twelve months from the time of the discovery of

448 *Notarary.* If any limitation set forth in this condition or condition mentioned & is prohibited by the statutes of the state in which this bond is issued, the said limitation shall be considered to be amended to agree with the minimum period of limitation permitted by such statutes.

449 If no attempt is made regarding or this bond as originally placed, no change or change of any of the terms or conditions or statements, whether made before or after the date of this bond, shall be valid unless set forth in an endorsement added hereto and signed by the president, the vice-president, or one of the secretaries of the Company. Neither notice given to nor the knowledge of any agent or any other person, whether received or acquired before or after the date of this bond, shall be held to waive any of the terms or conditions or statements of this bond, or to preclude the Company from asserting any defense under the said terms, conditions, and statements, unless set forth in an endorsement added hereto and signed by one of the said officers.

450 In Witness Whereof the Company has caused this bond to be signed by its president and its vice-president and secretary; but this bond shall not be binding upon the Company unless it shall be countersigned by a duly authorized representative of the Company.

George F. Howes,

President.

Howe J. Howes,

Vice-Pres. and Secy.

Countersigned by H. M. Anderson.

Examined by H. A., entered by H. A.

ENDORSEMENT.

421

THE FIDELITY AND CASUALTY COMPANY OF NEW
YORK.

H. A.

Form Special.

Date, December 15, 1910.

That part of this bond beginning with the figure "421" in line 16 and ending with the word "agreement" in line 19 is hereby amended to read as follows:

"(2) through the failure of the Principal during the term of this bond, or within six months from the expiration, termination, or cancellation thereof, to deliver to the Obligor all money and other property received by the Principal during the said term of this bond on accounts sold, assigned, pledged, or transferred under the said agreement; or received by the said Principal within six months from the expiration, termination, or cancellation of this bond on accounts sold, assigned, pledged, or transferred under the said agreement during the said term of this bond."

422

The word "ten" in line 66 of this bond is hereby amended to read "twenty."

It is hereby understood and agreed that the written statement of the Obligor, that he has made the examinations required by section c of condition numbered 7 and has inspected the invoices from the factories, according to the terms of the contract referred to in this bond, when served upon the Company at its office in the City of New York, shall be deemed *prima facie* evidence of such facts.

423

This endorsement is attached to and forms a part of Bond No. 409,071 issued by the Company to William H. Burden.

GEO. W. ALLEN,

H. A.

Assistant Secretary.

424

Exhibit 1, March 2, 1911.

Retired merchant, not desiring partnership, will loan established rated party \$10,000-\$20,000 (6%), same carrying responsible position. B., 139 Herald, Downtown.

Exhibit 2, March 2, 1911.

This exhibit consists of three lists of accounts assigned. The first is headed as follows:

- 425 List of accounts this day Jany. 5, 1911, sold and assigned by A. L. Canfield to W. H. Burden in pursuance of the contract made between them dated December 14th, 1910, amended Decr. 16" 1910 (Transfers on said accounts being dated Jany. 4, 1911).

The body of the list is the same as Schedule A annexed to the petition.

The second list is headed as follows:

NEW YORK, JANY. 13, 1911.

- 426 List of accounts this day sold and assigned by A. L. Canfield to W. H. Burden in pursuance of the contract made between them dated December 14th, 1910. Amended December 16th, 1910.

The body of the list is the same as Schedule B annexed to the petition.

The third list included in Exhibit 2, March 2, 1911, is headed as follows:

List of accounts this day sold and assigned by A. L. Canfield to W. H. Burden in pursuance of contract made between them dated December 14" 1910.

The list contains the names and addresses of 93 different debtors, and the amounts owing from each, aggregating \$13,334.34.

Exhibit 3, March 2, 1911.**SUMMARY OF DEBTS AND ASSETS.**

[From the Statements of the Bankrupt, in Schedules A and B.]

Schedule A.	1	(1)	Taxes and Debts due United States.	
"	"	1	(2) Taxes due States, Counties, Districts and Municipalities.	
"	"	1	(3) Wages.	136.00
"	"	1	(4) Other debts preferred by law.	
Schedule A.	2		Secured Claims.	1,000.00
Schedule A.	3		Unsecured Claims.	26,763.21
Schedule A.	4		Notes and Bills which ought to be paid by other parties thereto.	55,214.76
Schedule A.	5		Accommodation paper.	11,500.00
Schedule A. Total.				103,413.97
Schedule B.	1		Real Estate.	5,000.00
Schedule B.	2—a.		Cash on hand.	
"	"	2—b.	Bills, promissory notes, and securities.	14,125.00
"	"	2—c.	Stock in trade.	12,000.00
"	"	2—d.	Household goods, &c.	
"	"	2—e.	Books, prints and pictures.	
"	"	2—f.	Horses, cows and other animals.	
"	"	2—g.	Carriages and other vehicles.	
"	"	2—h.	Farming stock and implements.	
"	"	2—i.	Shipping and shares in vessels.	
"	"	2—k.	Machinery, tools, &c.	1,500.00
"	"	2—l.	Patents, copyrights and trade-marks.	5,000.00
"	"	2—m.	Other personal property.	

Schedule B.	3—a.	Debts due on open accounts.	20,554.78
"	"	3—b. Stocks, negotiable bonds, &c.	7,600.00
"	"	3—c. Policies of insurance.	100.00
"	"	3—d. Unliquidated claims.	
"	"	3—e. Deposits of money in banks and elsewhere.	1,200.00
Schedule B.	4	Property in reversion, remainder, trust, &c.	
Schedule B.	5	Property claimed to be exempted.	150.00
Schedule B.	6	Books, deeds and papers, ledgers, day books, check books etc.	
Schedule B. Total.			67,229.78

Opinion.

433

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

Re

ABRAM L. CANFIELD,
Alleged Bankrupt.

BRUSH & CRAWFORD, for the petitioner,
ENGEL BROTHERS, for the Receiver.

434

HAND, District Judge:—

The first question is of the admissibility of oral testimony to contradict the written instrument. It would seem hardly necessary to show that the parties may not avoid the positive command of the sovereign by resorting to so easy a cover as reducing their agreement to writing, Wigmore, Section 2414. However, the case in Barbour is to the contrary, and there are other cases looking in the same direction. I regard *Scott v. Lloyd*, 9 Peters, 418, 446, as controlling, because in that case although the bargain took the form of the sale of an annuity charged on land, the court charged the jury that they might consider all the circumstances including matter in pais contradicting the deeds. This part of the charge the Supreme Court sustained after full discussion. So far as the case in Barbour itself goes, it is at least overruled by *Midgett v. Goler*, 18 Hun, 302. Nothing is more common than for courts to disregard the form of the transaction and find whether it is only a cover for violation of the statute; the books

435

- 436 are full of the unravelling of all sorts of ingenuities, which involve the contradiction of what the parties have written, *Mercantile Trust Co. v. Gimbernath*, 134 App. Div., 410. Upon principle there can be no doubt the parol evidence rule means only this; that where the parties have in any form said that a writing shall completely embody their engagements, the court can enforce none but the written stipulations without disregarding the very contract they have made, *Wigmore*, Sections 2429, 2430. When, however, the inquiry is whether the performance of the obligations contemplated, involves acts which are forbidden by law, the parties
- 437 have no power to determine the scope of that inquiry. Even if the writing expressly agreed that nothing but itself should be considered, the inquiry would still be whether notwithstanding that written stipulation they had made an illegal contract dehors the writing. If so, that original contract is void, and with it must fall the written agreement, whether the latter be regarded as a part of the total engagements between the parties, or as an independent contract made in performance of the prior oral contract. Nor can there be any estoppel against setting up the illegality of an agreement; that would be to evade the very purpose of the law in forbidding men to make it. It
- 438 would be peculiarly improper in the case as here of a statute designed to relieve the weaker party from some supposed oppression. Surely everyone must see that when the law relieves such an one from the consequences of his weaker position in the bargain, he may not be successfully tied up at the very time of his weakness from subsequently claiming protection.

On the merits I agree with the Master. It is of course possible by consistent hostility not to enforce any statute of which one dis-

approves the purpose. Nothing short of 439
 such a determination can, I think, cover up the
 actual tenor of this transaction; and, if so, I
 have no right to relieve the lender, because the
 penalty is greater than I might wish, or even if
 the offence should seem to me to be no offence at
 all. To that particular kind of judicial usurpa-
 tion I will not yield. What then are the facts?
 The lender borrows all his funds at five per cent
 and lends them upon a troublesome collateral at
 six per cent. By that he gets \$100 per year and
 accepts a risk of \$10,000. So far there is small in-
 ducement by way of profit. However, he does get 440
 in addition \$1200 per year, making a net profit of
 \$1300 on his loan. That he explains, was no more
 than fair return for the work required of him as
 obligee under the guaranty bond; work which was
 undeniably substantial and vexatious. The ques-
 tion resolves itself into a consideration of whether
 \$1200 per year was clearly too much to pay for
 the work. What then was it and how did he cal-
 culate its worth. He says that he knew that the
 accounts would average about \$100 each and that
 there would be therefore always 100 of them out-
 standing. His substantial duties in regard to 441
 each were these; (a) to notify the debtor when-
 ever remittance to him from Canfield on any ac-
 count was twenty days in default; (b) to examine
 the books and vouchers of Canfield monthly and
 to compare the statements rendered by Canfield
 to him with the books of original entry. The
 work of comparison Burden says that he esti-
 mated would take five or six days every month,
 while the letters to overdue debtors would be an
 added labor. However, all the comparison re-
 quired upon ninety-eight accounts he said he in
 fact did in one day. It is of course possible that

- 442 his provisional estimates were honestly so far wrong as that, but, since he was himself a book-keeper, it is unlikely. It is also true that he made two other examinations in January, but these were for substituted accounts and there appears no reason to suppose that the parties originally contemplated substituted accounts or any other examination than the monthly one required in the bond. That being so, certainly Burden much miscalculated the labor involved in doing what was required. The labor of notifying delinquent debtors was necessarily uncertain, but if every debtor failed to pay—a ridiculous assumption—
- 443 it would not have equalled the difference between the pay for a day's work and the monthly interest rate. Indeed the accounts assigned apparently were only due in four months. There is just ground then for believing on Burden's own testimony alone that he hardly regarded the services mentioned as equal to the pay reserved.

- Moreover, the whole situation was most extraordinary. Why should Burden at the outset have sought a place at \$50 per week with light work as an accessory to a loan of \$10,000? It is perhaps not incredible, but it is certainly most unusual. Why thereafter should he lend money
- 444 that he did not have for the sake of \$100 and, again as an accessory, perform incidental services to secure the principal, which were worth \$1200? If he had been in search of employment, he might have thought to get it in this way for its own sake, but he advertised himself as a retired merchant with money to lend. If he honestly believed what he now says he was an extraordinary man; but if he saw a chance by borrowing to lend out at eighteen per cent he was a usual man. If, moreover, he looked about with his broker for ingenious fetches to elude the drastic usury law of New York, he

found one which under the circumstances had an
 apparent plausibility that was most promising. 445
 All the antecedent probability is therefore, with
 the trustee and against the claimant.

Nevertheless suspicion is not enough for the
 result is harsh. The added proof comes from the
 direct testimony. Canfield and Hess each swear
 squarely that the whole matter was a cover for
 usury; Koehler and Burden squarely contradict
 them. Burden has \$10,000 to lose; Koehler must
 naturally see his customer through if he has em-
 barked him in the difficulties and has suggested
 the device to him. Each of these has a strong
 personal bias to tell the story as they tell it. 446
 Canfield has his own proper bias as well, though not
 so direct as Burden's. If he should get his dis-
 charge, it is quite true that he would have no
 pecuniary interest in how the estate was divided
 between his creditors; still I think it not fanciful
 to assume that he has a reasonable motive to make
 the dividend to his general creditors as large as
 possible. If on the other hand his discharge be
 refused, he has an obvious motive now to tell a
 story which may protect him from successful suit
 hereafter upon this indebtedness. Further more
 the same story would serve to defeat objection
 to his discharge if that came from Burden himself, 447
 for it would show that he had no provable debt.
 Now I think that there is already in the case
 enough proof to show that Canfield may have some
 ground to fear for his discharge, without of course
 meaning to suggest any opinion upon that subject.
 While, therefore, it is undoubtedly true that of the
 two Burden is more directly concerned in the out-
 come since he has his money directly staked on
 the result, I cannot still regard Canfield as a dis-
 interested person. The same is not true of Her-
 zog's testimony, for I can see no motive which

448 she can have in telling what is not true. She is now married and presumptively not dependent upon Canfield for employment, nor is it indeed apparent that he is in a position to give her future employment, were she not. The question raised of her presence at the interview is largely verbal, for with such partitions with open windows in them giving sight into Canfield's room, and especially with the door left open, there is no reason to doubt that she was in a position to hear, as she claims she was.

449 However, were the case one merely of word against word, I should perhaps feel that the receiver had not carried the burden of proof which the defense puts upon him. The antecedent probability of Canfield's story, and the improbability of Burden's, supply a corroboration which turns the scale. It is not essential that I should say every reasonable doubt, as though Burden were being tried for the crime of perjury, but the preponderance of the proof is all that is required. Just what is meant by the phrase found in the books that the proof must be clear and convincing is not apparent, except it be that a court should be cautious. However, indecision, or hostility, is not caution, and here a determination for Burden can proceed only from one or the other.

450 Finally a word about the supposed equities of the situation. Whether or not the statute against perjury is too drastic, or is unwise economically, is in the first place no business of the courts, nor have they any right, even if they have the power, indirectly to substitute their own beliefs for those of the legislature, no matter which of the two is right. Here, however, there is not even the supposed room for such spurious considerations which at times prove potent in actual decisions, because the law of perjury is many decades old upon

the New York statute books, and everyone knows 451
 what chances he takes when he disobeys it. If
 my inference is right upon the facts, Burden de-
 serves not the slightest sympathy. He has in-
 vented a very ingenious and plausible device to
 evade the law, one of those manifold expressions
 of the pressure which economic necessity exerts
 in this matter to circumvent the popular will.
 When he did it, at the suggestion of his broker, he
 showed clearly enough that he was quite alive to
 what he was about, and to the risks he was taking.
 The play has gone against him, and he has no
 ground of complaint whatever. Therefore, the 452
 whole question is one of fact, to be regarded with-
 out the least color of sympathy or prejudice. If
 he did honestly make such a contract for so little
 profit, overweighted as it was with an incident of
 so much more consequence than the main motive
 itself, he is like any other creditor; if he was only
 one more money-lender, who will take the risk of
 forfeiture under the usury laws, in the hopes that
 he will not be caught, he has himself to blame for
 disregarding the will of the community in which
 he lives. I can have no doubt of the facts, and the
 report will be confirmed.

L. H. 453
 U. S. D. J.

454 **Order Confirming Report of Special Master.**

At a Stated Term of the District Court of the United States, held in and for the Southern District of New York, at the Post Office building, in the Borough of Manhattan, City of New York, this 13th day of July, 1911.

Present—HON. LEARNED HAND, Judge.

455

In the Matter

of

ABRAM L. CANFIELD,
Bankrupt.

456

The motion of the claimant for a re-argument of the motion to confirm the Special Master's report herein, and for a resettlement of the order filed herein on July 8th, 1911, having duly come on to be heard, upon reading and filing the affidavit of John J. Crawford, verified the 11th day of July, 1911, and after hearing counsel for the respective parties,

Now, on motion of Brush & Crawford, attorneys for the claimant, William H. Burden, it is

ORDERED, that the order entered herein on July 8th, 1911, be resettled so as to read as follows:

“At a Stated Term of the District Court of the United States, held in and for the Southern District of New York, at the Post Office Building, in the Borough of Manhattan, City of New York, this 8th day of July, 1911. 457

Present—HON. LEARNED HAND, Judge.

In the Matter

of

ABRAM L. CANFIELD,
Bankrupt.

458

A petition in reclamation having been filed by William H. Burden, as claimant against Clarence S. Houghton receiver herein, with this Court, for an order directing the said Receiver to pay over to the said petitioner certain funds the avails of accounts payable upon an alleged assignment claimed to have been made by the Bankrupt herein, to the said William H. Burden, and said Clarence S. Houghton, at the time when said petition was heard, having filed an answer thereto, in opposition, and the Court having thereupon duly made an order of reference concerning the matters in the said petition and answer; to the Honorable William H. Willis as Special Master, and thereafter the parties having appeared before the Special Master and offered their respective proofs, and said Special Master having thereafter duly made his report to this Court, which report was duly filed herein in the Office of the Clerk of this Court, recommending among other things, that the prayer of the petitioner, be denied, and that the said petitioner, William H. Burden, reassign and transfer to the receiver herein said accounts payable, in said petition described, and thereafter a motion having been duly made by the Receiver 459

460 herein for the confirmation of the said report of the said Special Master before the Court, and said motion having duly come on to be heard the 26th day of June, 1911, now on reading and filing the said petition and answer, on the testimony and exhibits, and on all papers filed and proceedings had herein, and on the report of the Special Master, and after hearing Counsel for the respective parties, and after due deliberation, ON MOTION OF ENGEL BROTHERS, attorneys for the Receiver, it is

ORDERED, ADJUDGED AND DECREED that the report of the Special Master herein, be and the same hereby is in all things confirmed, and it is further

461 ORDERED, ADJUDGED AND DECREED that the said claimant William H. Burden, within five days after notice of this order, reassign the said accounts in the petition herein described, by proper instrument in writing to Clarence S. Houghton, Receiver, herein."

LEARNED HAND,
U. S. D. J.

(Endorsed:)—United States District Court, Southern District of New York.—No. 14582.—In the Matter of Abram L. Canfield, Bankrupt.—Order.—Brush & Crawford, Attorneys for Claimant, 30 Broad Street, Borough of Manhattan, New York City.—U. S. District Court.—S. D. of N. Y.—Filed Jul 13, 1911.

Petition for Appeal and Allowance of Appeal. 463

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

ABRAM L. CANFIELD,
Bankrupt.

WILLIAM H. BURDEN,
Claimant.

In Bank-
ruptcy,
No. 14,582.

464

The above named claimant William H. Burden, conceiving himself aggrieved by the decree made and entered herein on the 8th day of July, 1911, and re-settled and re-entered on the 13th day of July, 1911, does hereby appeal to the Circuit Court of Appeals for the Second Circuit for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made duly authenticated may be sent to the United States Circuit Court of Appeals for the Second Circuit.

465

Dated, July 18, 1911.

BRUSH & CRAWFORD,
Attorneys for Claimant,
No. 30 Broad Street,
Borough of Manhattan,
New York City.

- 466 The foregoing claim of appeal is allowed.
Dated, July 19, 1911.

VAN VECHTEN VEEDER,
D. J.

(Endorsed:)—United States District Court,
Southern District of New York.—No. 14582.—
In the Matter of Abram L. Canfield, Bankrupt.
—Petition for Appeal to Circuit Court of Ap-
peals.—Brush & Crawford, Attorneys for Wil-
liam H. Burden, Claimant, 30 Broad Street,
Borough of Manhattan, New York City.—U. S.
District Court, S. D. of N. Y.—Filed Jul 19,
1911.

467

468

Assignment of Errors.

469

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

ABRAM L. CANFIELD,
Bankrupt.In Bank-
ruptcy,
No. 14,582.

470

And now, on this 18th day of July, 1911, come the claimant William H. Burden, and says that the final order of the District Court of the United States for the Southern District of New York, entered on the 8th day of July, 1911, and re-settled and re-entered on the 13th day of July, 1911, denying the application of the claimant for an order directing the Receiver to pay over to the claimant the moneys collected on certain accounts assigned by the bankrupt to the claimant, is erroneous in the following particulars:

471

First.—In that the witness A. L. Canfield was permitted to testify as follows: "I asked Mr. Burden just what he meant by that clause; why he said that was simply to get around the usury law."

Second.—In that the witness A. L. Canfield was permitted to testify that prior to the execution of the written contract between the witness and the claimant, the claimant said to the witness that he wanted six per cent. legal interest in addition

472 to one per cent. bonus every month for making the loan.

Third.—In that the witness Sadie Herzog was permitted to testify that at a conversation between the claimant and the bankrupt held before the execution of the written contract between them, the claimant said he wanted six per cent. and two per cent. besides.

473 *Fourth.*—In that the witness Sadie Herzog was permitted to testify that at a conversation between the claimant and the bankrupt held before said written contract was executed, the claimant said that he would agree to allow the bankrupt \$10,000 on assigned accounts and for this loan he should agree to give him six per cent; and one per cent. as a bonus, which was to cover the usury charge.

Fifth.—In that the court found that the stipulations in the contract between the claimant and the bankrupt respecting compensation for services to be performed by the claimant were not intended as stated in the written instrument.

474 *Sixth.*—In that the court found that the claimant intended to take or reserve interest at a higher rate than six per cent. per annum for the loan or forbearance of money.

Seventh.—In that the court found that the receiver was entitled to have the assignment of the accounts declared void without paying or offering to pay the money actually loaned.

Eighth.—In that the court refused to find that the statutes of New York under which the assign-

ment of the accounts to the claimant have been 475
declared void, deny to the claimant the equal protection of the laws.

Ninth.—In that the court refused to direct the Receiver to pay over to the claimant the moneys collected by the Receiver on the accounts assigned by the bankrupt.

WHEREFORE, the claimant prays that the said order may be reversed.

BRUSH & CRAWFORD,
Attorneys for Claimant, 476
No. 30 Broad Street,
Borough of Manhattan,
New York City.

(Endorsed:)—United States District Court, Southern District of New York.—14582.—In the Matter of Abram L. Canfield, Bankrupt.—Assignment of Errors.—Brush & Crawford, Attorneys for William H. Burden, Claimant, 30 Broad Street, Borough of Manhattan, New York City.—U. S. District Court, S. D. of N. Y.—Filed Jul. 19, 1911.

478

Stipulation.**UNITED STATES DISTRICT COURT,****SOUTHERN DISTRICT OF NEW YORK.**

In the Matter

- of

ABRAM L. CANFIELD,
Bankrupt.

479

RECLAMATION PROCEEDING OF
WILLIAM H. BURDEN.

The parties hereto, by their respective attorneys, hereby stipulate that the following parts of the record in this proceeding shall be printed as the record upon the appeal herein, to wit:

The Petition.

The opposing Affidavit.

480

The report of the Special Master.

The testimony taken before the Special Master.

A statement that Exhibit A, February 7, 1911, is the same paper as Exhibit C annexed to the Petition.

The following abstracts of Exhibit B and E, February 7, 1911, viz.

Exhibit B, February 7, 1911, consists of 46 separate papers, one of which was in the following form:

Monthly Statement.

481

Telephone 1765 Beekman.

Bought of A. L. CANFIELD,

97 Beekman Street.

New York,.....191 .

M

H. S. LANDSMAN & SON,

Danbury, Conn.

Terms, Net 60 days, 2 off 10.

1910

Aug. 10	34.90	
Sept. 8	110.38	
Oct. 21	13.44	
Nov. 4	35.60	
16	40.50	
30	1.00	236.82

482

For and in consideration of the sum of One Dollar and other good and valuable considerations to me in hand paid by William H. Burden, of the City of New York, the receipt whereof is hereby acknowledged, I do hereby sell, assign, transfer and set over unto said William H. Burden, the account and claim against H. S. Landsman & Son, amounting to \$236.92 hereto attached, and the money to be paid thereon; and I do hereby represent that there has been no previous assignment of said account; that the whole amount thereof is just and true; that there are no defenses or counterclaims thereto; that no payments have been made thereon, and that the goods referred to in said account have been shipped to the debtor and have been accepted by him.

483

In Witness Whereof, I have hereunto set my hand the 4th day of January, 1911.

A. L. CANFIELD.

- 484 The other 45 papers included in the Exhibit were in the same form, except as to the names of the debtors, the items and amounts. The whole number of items included in the 46 papers is 239.

Exhibit E, February 7, 1911, consists of 63 separate papers, all in the form set forth in the abstract of Exhibit B, but differing as to the names of the debtors, the items and amounts. The whole number of items included in these 63 papers is 225.

Exhibits 1 and 2, February 24, 1911.

Exhibit 1, March 2, 1911.

- 485 The following abstract of Exhibit 2, March 2, 1911, viz:

Exhibit 2, March 2, 1911, consists of three lists of accounts assigned. The first is headed as follows:

List of accounts this day Jany. 5, 1911, sold and assigned by A. L. Canfield to W. H. Burden in pursuance of the contract between them dated December 14th, 1910, amended Decr. 16th 1910 (transfers of said accounts being dated Jany. 4, 1911).

The body of the list is the same as Schedule A annexed to the petition.

- 486 The second list is headed as follows:

New York, Jany. 13, 1911.

List of accounts this day sold and assigned by A. L. Canfield to W. H. Burden in pursuance of the contract between them dated December 14th, 1910. Amended December 16th, 1910.

The body of the list is the same as Schedule B annexed to the petition.

The third list included in Exhibit 2, March 2, 1911, is headed as follows:

List of accounts this day sold and assigned by A. L. Canfield to W. H. Burden in pursuance of

contract made between them dated December 14" 487
1910.

The list contains the names and addresses of 93 different debtors, and the amounts owing from each, aggregating \$13,334.34.

That part of Exhibit 3, March 2, 1911, which is headed:

"Summary of Debts and Assets."

The opinion of the Court.

The order of the District Court, as re-settled on July 13th, 1911, confirming the report of the Special Master.

The appeal and allowance of appeal.

The assignment of errors.

488

Dated, New York, August 11th, 1911.

BRUSH & CRAWFORD,
Attorneys for William H. Burden,
Claimant.

ENGEL BROS.,
Attorneys for Receiver.

(Endorsed:) United States District Court, Southern District of New York. In the Matter of Abram L. Canfield, Bankrupt. Reclamation Proceeding of William H. Burden. Stipulation. Brush & Crawford, Attorneys for Claimant, 30 Broad Street, Borough of Manhattan, New York City, U. S. District Court, S. D. of N. Y. Filed Sept. 18, 1911. 489

490 UNITED STATES OF AMERICA, }
Southern District of New York, } ss.:

In the Matter of Abram L. Canfield, Bankrupt.
 Reclamation Proceeding of William H. Burden.

I, THOMAS ALEXANDER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of so much of the record of the District Court in the above-entitled matter as is mentioned in the stipulation of the parties filed herein and printed herewith.

491 In testimony whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, this 21st day of September, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States, the one hundred and thirty-sixth.

(Seal)

THOS. ALEXANDER,
 Clerk.

United States Circuit Court of Appeals for the Second Circuit,
October Term, 1911.

Argued January 6, 1912; Decided February 14, 1912.

No. 134.

In the Matter of ABRAM L. CANFIELD, Bankrupt.

Appeal from the District Court of the United States for the Southern
District of New York.

Before Lacombe, Coxe, and Ward, Circuit Judges.

On Appeal from an Order of the District Court in Bankruptcy Confirming a Report of the Special Master and Ordering that William H. Burden within Five Days Re-assign Certain Accounts to Clarence S. Houghton, Receiver in Bankruptcy.

The following agreement was entered into between the bankrupt and William H. Burden, the appellant:

"This Agreement, made this 14th day of December, 1910, between Abram L. Canfield, of the Borough of Manhattan, City of New York, party of the first part, and William H. Burden, of the same place, party of the second part. Witnesseth:

That in consideration of the premises and the mutual covenants and agreements hereinafter mentioned, and of the sum of One Dollar paid by the party of the second part to the party of the first part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the parties hereto have agreed as follows, viz.:

I. The party of the first part shall assign and transfer to the party of the second part approved accounts due from reputable debtors, and the party of the second part shall pay therefor a sum equal to seventy-five per cent. of the total amount thereof, not to exceed over Ten thousand Dollars, unless he shall elect to advance a larger sum.

II. The said accounts shall be for goods sold and delivered in good faith to the respective persons against whom the accounts exist, and in all cases, the said goods shall have been accepted by such persons.

III. All accounts assigned under this agreement shall result from the sale of goods shipped either from the place of business of the party of the first part in the City of New York, or from one of the following factories:"

(Here follows a list of ten companies.)

"IV. Where the goods shall be shipped from the place of business of the party of the first part, the original shipping receipts covering the shipment referred to in the account shall be submitted to the party of the second part for his inspection at the time of the assignment of the account, and where the goods shall be shipped from one

of the factories aforesaid, the invoice sent by the said factory to the party of the first part shall be submitted in like manner.

V. The party of the first part shall act as the agent of the party of the second part in collecting the said accounts, but as remittances shall be received therefor, the checks and drafts shall be immediately delivered to the party of the second part, so endorsed as to make them payable to him.

VI. The party of the first part hereby guarantees that each account so to be assigned will be paid within ten days after the same shall become due, and if any such account shall not be so paid, the party of the first part shall pay to the party of the second part the full amount thereof, after ten days' notice in writing, and thereupon the party of the second part shall re-assign the same to the party of the first part; and if the party of the first part shall fail to so pay the amount of any such unpaid account, the party of the second part, at his election, may revoke the agency of the party of the first part to collect any of said accounts then uncollected.

VII. The party of the second part shall be entitled to compensation for the labor and services to be performed, and time to be expended, by him in making the examinations required by the terms of the bond executed by the Fidelity and Casualty Company of New York, and delivered simultaneously herewith, which compensation is to be measured by computing one per cent per month upon whatever part of the advance shall remain uncollected on the said accounts, and for the period that the same shall remain uncollected.

VIII. Until all said accounts shall have been collected or re-assigned, the party of the second part shall have the right to examine at all reasonable times, the books of accounts and vouchers of the party of the first part, which examination may be made either personally or by his duly authorized agent.

IX. When the amount collected on said accounts and turned over to the party of the second part shall amount to the total sum advanced thereon, with interest at the rate of six per cent. per annum, and the party of the second part shall have received out of said collections his compensation for services as above mentioned, and all disbursements made or liabilities incurred, for exchange, or for attorney's fees, or other expenses, in and about the collection of said accounts, he shall re-assign to the party of the first part all accounts then uncollected.

X. Until the termination of this contract by mutual consent, all further purchasers of accounts by the party of the second part from the party of the first part shall be subject to the terms hereof."

Canfield paid the premium for the bond conditioned to indemnify Burden against loss arising from the unfaithfulness of Canfield in collecting assigned accounts. The services to be performed by Burden were to require Canfield to deliver a statement of the due date of each assigned account and, if payment were not made within twenty days, to himself make demand upon the debtor for the amount due; to require a responsible employee of Canfield to certify that each account assigned represented a bona fide and actual shipment in pursuance thereof; to make a monthly examination of Canfield's books,

accounts and vouchers and a comparison between all unpaid accounts on his own list and such accounts on Canfield's books.

On January 18, 1911, a petition in bankruptcy was filed against Canfield and a receiver appointed. On that date he owed Burden \$10,512.72.

The Receiver proceeded to collect the accounts assigned to Burden, whereupon Burden instituted reclamation proceedings in the District Court praying that the Receiver might be required to pay over to him the proceeds of the accounts he had collected or might thereafter collect. The Receiver filed an affidavit in opposition to the petition and the matter was thereupon referred to the Referee as Special Master.

Testimony was taken, over Burden's objection, as to the negotiations preceding the execution of the agreement of December 14 for the purpose of showing that the parties intended to make a usurious contract. The Special Master and District Judge both held that the agreement was usurious and an order was entered denying the prayer of Burden's petition and directing that Burden re-assign to the Receiver all the accounts assigned as aforesaid to him by the bankrupt.

Thereupon Burden took this appeal.

John J. Crawford, for the Appellant.

J. B. Engel, for the Appellee.

COXE, J.:

The appellant contends that no testimony should have been taken showing that the parties intended to enter into a usurious contract because the same contradicted the agreement of December 14 actually executed. We think that such testimony was admissible. The purpose of the usury law is to protect borrowers whose distress exposes them to be imposed upon. The debtor is always allowed to make this defense, notwithstanding that he thereby contradicts a written instrument, and so are his privies. *Knickerbocker Insurance Co. v. Nelson*, 78 N. Y., 50; *Wilmarth v. Heine*, 137 App. Div., 528; *In re Kellogg*, 121 F. R., 333; *Mudgett v. Coler*, 18 Hun., 302; *Rohan v. Hansen*, 11 Cush., 44; 27 Am. & Eng. Cyc. of Law, 2d Ed., 540; *Mercantile Trust Co. v. Gimbernat*, 134 App. Div., 410.

We need not inquire into the jurisdiction of the court or the power of the Receiver, because Burden instituted the reclamation proceedings and invited the court to pass upon his rights, to which the Receiver assented, *Bryan v. Bernheimer*, 181 U. S., 188; *Whitney v. Weinman*, 198 U. S., 539, 552.

Upon the merits, though the question of fact is an exceedingly close one, the majority of the court is not persuaded that the Receiver (now Trustee) has proved his contention, for the following reasons:

First. The instrument being perfectly valid upon its face, and the taking of usury being a crime, the burden was strongly upon the trustee to prove his contention in that regard.

If the testimony be evenly balanced or doubtful, Burden is entitled to recover.

Second. The usurious nature of the loan is sworn to by Canfield and one witness and denied by Burden and one witness. As to

number and character of the witnesses, there is no preponderance in favor of the trustee.

We think of no valid argument for giving greater credence to Canfield and Herzog than to Burden and Koehler.

Third. The advertisement in the paper by Burden contemplated just such an arrangement as the written agreement indicates. What he desired was employment and in order to secure it he was willing to lend from ten to twenty thousand dollars at the current rate of interest.

Fourth. The examination of the books and accounts which Burden agreed to make would take five or six days a month and for it he was entitled to some compensation.

If the holding of the District Court be correct, he was to do this work without any compensation whatever. It is hardly to be credited that Burden would consent to lend his money for the legal rate and do all this clerical work for nothing.

Fifth. The testimony that Burden volunteered the statement, that the contract of December 14th was intended to avoid the usury laws, to the only person who could take advantage of those laws seems incredible.

Canfield was asked what he said to Burden regarding the clause relating to services to be rendered, and he answered:

"I asked Mr. Burden just what he meant by that clause; why, he said that that was simply to get around the usury law; there were no services to be rendered at all; there were no services rendered."

Of course bankruptcy was not contemplated at that time, at least by Burden. If Canfield did not enforce the usury law Burden had nothing to fear. If the agreement did not bind Canfield, it did not bind anyone and yet Burden, if this testimony be true, made it absolutely useless to accomplish the object for which he says it was signed.

Why should Burden make an agreement to enable him to receive usurious interest and at the same time make it impossible for him to take such interest without placing him absolutely at the mercy of Canfield?

There is no pretense that Burden was non compos mentis at the time, and yet it is difficult to believe that any rational being would have gone to the trouble and expense of having this elaborate agreement prepared for the purpose of avoiding the usury law and at the same time admit to the only man who could interpose the defense of usury that it was a void agreement. So far as the validity of the agreement is concerned, Burden might as well have stamped in red ink on its face the words void for usury.

We must assume that Burden is a man of ordinary common-sense, but in order to find that he made the statement quoted, we must convict him of stupidity which is unique in its originality. It is difficult to imagine that a rational being would procure a safe to protect him from burglary and immediately send the "combination" to the burglar whom he had most reason to dread.

Sixth. There was nothing extraordinary in the endeavor of Burden to secure a place where he could obtain light work and be paid

a reasonable sum therefor, neither is there anything illegal or suspicious in the fact that in order to get such work he was willing to lend \$20,000.

Seventh. We are unable to accept the statement that Burden said that he would not render any services, or even that he contemplated such action. The bond made his rendering these services a condition and it is difficult to believe that he was so unintelligent as not to understand that failure to do what the bond required him to do would destroy an important security which he held against loss.

Eighth. The fact that Burden did little work is not of especial importance.

We are to test the contract as of the date of its inception and inquire what services he was required to do. If the business had run along for a year and he had complied with the condition he would have made examination of the books and assisted in making collections which would have taken a substantial amount of time and been worth a substantial compensation. The services were little because the failure came before the time of the first monthly "complete examination of books, accounts and vouchers."

The order of the District Court is reversed with costs.

At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post Office Building in the City of New York, on the 24th Day of February, One Thousand Nine Hundred and Twelve.

Present:

Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry G. Ward, Circuit Judges.

In the Matter of ABRAM L. CANFIELD, Bankrupt; WILLIAM H. BURDEN, Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is reversed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

E. H. L.

Endorsed: United States Circuit Court of Appeals, Second Circuit. In re A. L. Canfield. Order for Mandate. United States Circuit Court of Appeals Second Circuit. Filed Feb. 26, 1912. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ABRAM L. CANFIELD, Bankrupt.

Reclamation Proceedings of William H. Burden.

Clarence S. Houghton as Receiver in Bankruptcy of the assets of the above named Bankrupt, conceiving himself aggrieved by the decree made and entered herein on the 26th day of February 1912 does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors, as filed herein, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, March 7, 1912.

JACOB J. LAZAROE,
Attorney for Appellee.

Office & P. O. Address, No. 132 Nassau Street, Manhattan Borough, New York City.

The foregoing claim of appeal is allowed.

Dated New York, March 14, 1912.

ALFRED C. COXE, *U. S. J.*

(Endorsed:) United States Circuit Court of Appeals for the Second Circuit. In the Matter of Abram L. Canfield, Bankrupt. Petition for Appeal. Jacob J. Lazaroe, Attorney for Appellee. Office & P. O. Address, #132 Nassau Street, Manhattan, New York City. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 14, 1912. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

In Bankruptcy. No. 14582.

In the Matter of ABRAM L. CANFIELD, Bankrupt.

Reclamation Proceedings of William H. Burden.

Assignment of Errors.

And now on this 11th day of March, 1912, comes Clarence S. Houghton, the Trustee in Bankruptcy and Receiver of the assets and effects of Abram L. Canfield, Bankrupt herein, by Jacob J. Lazaroe, his attorney, and says: that in the decree of the United States Circuit Court of Appeals for the Second Circuit, entered on the 26th day of February, 1912 reversing the final order of the District Court of the United States for the Southern District of New

York, entered on the 8th day of July, 1911 and resettled and reentered on the 13th of July, 1911, there is manifest error in this, to wit:

First. In that William H. Willis, the Special Master to whom these proceedings on petition therefor of William H. Burden, claimant had been referred to hear and take proof, having found as a fact and so reported to the United States District Court for the Southern District of New York, that William H. Burden aforementioned, was not employed in any bona fide way to render services to Abram L. Canfield, Bankrupt and that the arrangement as contained in the agreement so made by and between the said Burden and said Bankrupt by which said Burden was to receive one per cent per month on his advances "as compensation for the labor and services to be performed and time to be expended by him in making the examinations required by the terms of the bond executed by the Fidelity & Casualty Company of New York" was not made in good faith or with the intention that such percentage should be paid for such purpose, but that such arrangement was intended to be and in fact was devised to cover a scheme, that said Burden shall receive more than the legal rate of interest on his advanced to the Bankrupt, and such Finding of Fact having been affirmed by the United States District Court for the Southern District of New York, the United States Circuit Court of Appeals for the Second Circuit was thereby precluded from reversing the final order thereon, entered, unless such Finding of Fact was clearly against the weight of evidence or clearly erroneous.

Second. That William H. Willis, the Special Master to whom this matter had been referred on petition therefor made by William H. Burden having found as a fact that the agreement forming the basis of the said Burden claim was usurious and wholly void, and having so reported to the United States District Court for the Southern District of New York, and thereon such Finding of Fact having been affirmed by said United States District Court the United States Circuit Court of Appeals for the Second Circuit, erred in not determining that such Finding as so affirmed became final and conclusive unless such Finding was clearly against the weight of evidence or clearly erroneous.

Third. That all the Findings of Fact made by William H. Willis the Special Master to whom the matters had been referred, as such, on the application therefor of William H. Burden, having been affirmed by the United States District Court, for the Southern District of New York, the final order entered thereon in the United States District Court, for the Southern District of New York on the 8th of July, 1911 and resettled and reentered on the 13th of July, 1911, should not have been reversed by the United States Circuit Court of Appeals, for the Second Circuit, unless such Findings of Fact were clearly erroneous or clearly against the weight of evidence.

Fourth. That William H. Willis, the Special Master to whom the matters herein had been referred, as such, on the petition therefor of William H. Burden, having made his Findings of Fact

thereon, and thereon made his report to the United States District Court for the Southern District of New York, and such Findings of Fact and report having been affirmed by the United States District Court, for the Southern District of New York, the United States Circuit Court of Appeals for the Second Circuit, erred in not determining that such Findings of Fact became forever conclusive on the parties, unless such Findings of Fact were clearly against the weight of evidence or clearly erroneous.

Fifth. That the United States Circuit Court of Appeals for the Second Circuit erred in determining that the taking of usury being a crime, the burden was strongly upon the Trustee to prove his contention in that regard.

Sixth. That the United States Circuit Court of Appeals for the Second Circuit, erred in determining that the usurious nature of the loan was sworn to by Canfield and one witness and denied by Burden and one witness, and that as to number and character of the witnesses there is no preponderance in favor of the Trustee.

Seventh. That the United States Circuit Court of Appeals for the Second Circuit, erred in determining that the advertisement in the paper by Burden contemplated just such an arrangement as the written agreement indicated.

Eighth. That the United States Circuit Court of Appeals for the Second Circuit erred in determining that the examination of the books of account which Burden agreed to make would take five or six days a month and that for it he was entitled to some compensation.

Ninth. That the United States Circuit Court of Appeals for the Second Circuit erred in determining that the testimony "that Burden volunteered the statement that the contract of December 14, was intended to avoid the usury Law to the only person who could take advantage of those Laws, seems incredible."

Tenth. That the United States Circuit Court of Appeals for the Second Circuit erred in determining that the Trustee herein had not proved his contention that the agreement made between Burden and the Bankrupt was a cover for usury.

Eleventh. That the United States Circuit Court of Appeals for the Second Circuit erred in determining that the preponderance of evidence in this proceeding was not in favor of sustaining the Findings of Fact made by William H. Willis, the Special Master herein, as affirmed by the United States District Court, for the Southern District of New York.

Twelfth. That the United States Circuit Court of Appeals for the Second Circuit erred in determining that the final order of the District Court of the United States for the Southern District of New York, entered herein on the 8th of July, 1911 and resettled and reentered on the 13th of July 1911 was not based on a preponderance of evidence in support thereof.

Thirteenth. That William H. Willis, the Special Master to whom the matters herein had been referred upon the petition therefor of William H. Burden, having found that the transactions therein were void for usury, and such Finding of Fact having been affirmed

by a Judge of the United States District Court for the Southern District of New York and a final order thereon having been entered on the 8th of July, 1911, the United States Circuit Court of Appeals, for the Second Circuit, had no jurisdiction to reverse said final order on the facts, unless such Findings of Fact or final order thereon was clearly erroneous or clearly against the weight of evidence.

Fourteenth. That as all the Findings of Fact made by Hon. William H. Willis the Special Master to whom the matters herein had been referred, upon the petition therefor of William H. Burden, are supported by the testimony and evidence in the record, and such Findings of Fact having been affirmed by the United States District Court for the Southern District of New York, the United States Circuit Court of Appeals for the Second Circuit erred in determining that the preponderance of evidence was equal or against the aforesaid Findings of Fact.

Fifteenth. That the United States Circuit Court of Appeals for the Second Circuit erred in reversing the final order entered herein in the United States District Court for the Southern District of New York on the 8th of July, 1911, and resettled and reentered on the 13th of July, 1911.

Sixteenth. That the United States Circuit Court of Appeals for the Second Circuit having found that the Court below had not committed any errors of Law, said Court of Appeals erred in not affirming the final order entered herein in the United States District Court, for the Southern District of New York, on the 8th of July, 1911 and resettled and reentered on the 13th of July, 1911.

Seventeenth. That the United States Circuit Court of Appeals for the Second Circuit, erred in finding that there was no preponderance of evidence in favor of the Trustee.

Nineteenth. That the United States Circuit Court of Appeals for the Second Circuit erred in finding that the witnesses Burden and Kohler, were entitled to more credence than the witnesses Canfield and Herzog.

Twentieth. That the United States Circuit Court of Appeals for the Second Circuit erred in refusing to determine that the final order entered in the United States District Court, for the Southern District of New York, on the 8th of July, 1911 and resettled and reentered on the 13th of July, 1911 should be affirmed.

Wherefore the said Clarence S. Houghton as Receiver of the assets of the above named Bankrupt, prays that the decree of the Said United States Circuit Court of Appeals for the Second Circuit be reversed.

JACOB J. LAZAROE,
Attorney for Applicant.

Office and P. O. Address: No. 132 Nassau Street, Manhattan Borough, New York City.

(Endorsed:) United States Circuit Court of Appeals for the Second Circuit. In the Matter of Abram L. Canfield, Bankrupt. (Reclamation Proceedings of William H. Burden.) Assignment of Errors. Jacob B. Lazaroe, Attorney for Appellant. Office & P. O.

Address No. 132 Nassau Str., Manhattan Borough, New York City.
Presented March 14, 1912. Alfred C. Coxey, U. S. J. United States
Circuit Court of Appeals, Second Circuit. Filed Mar. 14, 1912.
William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ABRAM L. CANFIELD, Bankrupt.

Reclamation Proceedings of William H. Burden.

Whereas heretofore and on or about the 26th day of February, 1912, a decree was made and entered herein, and

Whereas, Clarence S. Houghton as Receiver in Bankruptcy of the assets of Abram L. Canfield, bankrupt, feeling himself aggrieved thereby intends to appeal therefrom to the Supreme Court of the United States.

Now therefore, the Illinois Surety Company a corporation organized and existing under the laws of the State of Illinois and having an office and place of business at No. 5 Nassau Street, in the Borough of Manhattan, City and State of New York, does hereby undertake in the sum of One Thousand Dollars (\$1000.00) that the said Clarence S. Houghton as Receiver in Bankruptcy as aforesaid shall prosecute an appeal to effect and answer all costs and damages if he fail to make his plea good.

Dated New York, March 11th, 1912.

ILLINOIS SURETY COMPANY,
By J. ELIHU ROOT KUNZMANN,
[SEAL.] *Attorney-in-Fact.*

CITY AND COUNTY OF NEW YORK,
State of New York, ss:

On the 11th day of March, 1912, before me personally came J. Elihu Root Kunzmann to me known, who, being duly sworn, did depose and say that he resides in the City of New York; that he is an attorney-in-fact of the Illinois Surety Company, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal attached to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order; and that the liabilities of said Company do not exceed its assets, as ascertained in the manner provided by law.

Sworn to before me the day and year first above written.

[SEAL.]

HERMAN GEILER,
*Notary Public, Commissioner of Deeds for the
City of New York, Residing in the Borough
of Manhattan.*

Power of Attorney from Illinois Surety Company to D. Clinton Mackey, Hulbert T. E. Beardsley, and J. Elihu Root Kunzmann, or Any of Them.

Know All Men by these Presents: That the Illinois Surety Company, a corporation duly incorporated under the laws of the State of Illinois, and duly authorized to act as sole surety, in pursuance of the following resolution, which was passed by the Board of Directors of the Company at a meeting held March 25, A. D. 1907, to-wit:

"Resolved, that the President, Vice-President or an Acting-President is hereby authorized, empowered and directed to make and appoint such agents and to execute such Powers of Attorney to accept process for and on behalf of this Company, or to authorize the said attorneys and agents to execute Bonds, undertakings or writings obligatory in the nature thereof, for and on behalf of this Company, as shall be needful, and to the same extent and effect as though said appointments were severally made by separate action of the Board of Directors in each instance, and the Secretary or Assistant Secretary is hereby authorized, empowered and directed to authenticate such appointments, affixing the corporate seal of the Company to the same."

has made, constituted and appointed, and by these presents doth make, constitute and appoint D. Clinton Mackey, Hulbert T. E. Beardsley and J. Elihu Root Kunzmann, of the City, County and State of New York, or any of them, its true and lawful attorneys-in-fact, with full power and authority to sign, seal, acknowledge and deliver in its name, place and stead, as surety, Bonds, undertakings or writings obligatory in the nature thereof, and when such Bonds, undertakings or writings obligatory are signed by the said D. Clinton Mackey, Hulbert T. E. Beardsley and J. Elihu Root Kunzmann, or any of them, as attorneys-in-fact, to bind the Company as fully and to the same extent as if said Bonds, undertakings or writings obligatory in the nature thereof, were executed by the Executive Officers of this Company at its Home Office in the City of Chicago, State of Illinois, and the Company hereby ratifies and confirms all that its said attorneys-in-fact may do or lawfully cause to be done in the premises by virtue of these presents.

In Witness Whereof, the Illinois Surety Company has caused these presents to be signed by its President, attested by its Secretary and its corporate seal to be hereunto affixed this twenty-fourth day of January, A. D. 1912.

[SEAL.]

ILLINOIS SURETY COMPANY,
By A. J. HOPKINS, *President.*

Attest:

CHAS. E. SCHICK,
[SEAL.] *Secretary.*

I, J. Howard Cahill, Assistant Secretary of the Illinois Surety Company, hereby certify that the above Power of Attorney is a true copy of the original records of said Company.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Company, this twenty-fourth day of January, A. D. 1912, at the City of Chicago, State of Illinois.

[SEAL.]

J. HOWARD CAHILL,
Assistant Secretary.

*Statement of Financial Condition of Illinois Surety Company at the
Close of Business, December 31, 1911.*

Assets.

Bonds	8432,249.41
Cash in Office and Depositories	60,651.85
Premiums in Course of Collection	134,823.18
Accrued Interest	6,467.10
Bills Receivable	3,082.31
Advance on Contracts	23,672.25
Suspense	462.52
Miscellaneous Accounts Receivable	1,111.32
Due from Excise Committee	36,704.71
	<hr/>
	8699,224.45

Liabilities.

Capital Stock	8250,000.00
Surplus	50,000.00
Undivided Profits	122,028.89
Collateral Deposits	7,814.98
Reserve for Losses and Contingencies	53,600.39
Reserve for Re-Insurance	175,447.84
Accrued Taxes	948.23
Due for Re-Insurance	9,120.92
Commissions Accrued not due	30,287.42
	<hr/>
	8699,224.45

CITY AND COUNTY OF NEW YORK.

State of New York, ss:

I, J. Elihu Root Kunzmann, Attorney-in-fact of the Illinois Surety Company, do hereby certify that the foregoing is a true and correct copy of the statement of assets and liabilities of the said Company at the close of business, December 31, 1911.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Company, this 11th day of March, 1912.

[SEAL.]

J. ELIHU ROOT KUNZMANN,
Attorney-in-fact.

Subscribed and Sworn to before me this 11th day of March 1912.

HERMAN GEILER,
Notary Public, Commissioner of Deeds for the
City of New York, Residing in the Borough
of Manhattan.

The within bond is approved as to form.

BRUSH & CRAWFORD,
Attys for W. H. Burden.

(Endorsed:) Copy. U. S. Circuit Court of Appeals for the Second District. In the Matter of Abram L. Canfield, Bankrupt. Reclamation Proceedings of William H. Burden. I approve of the within bond and of the sufficiency of the surety. This bond to act as a supersedeas. Alfred C. Cox U. S. J. March 14, 1912. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 14, 1912. William Parkin, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 185 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the Matter of Abram L. Canfield, Bankrupt, (Reclamation proceeding of William H. Burden) as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 16th day of March in the year of our Lord One Thousand Nine Hundred and twelve and of the Independence of the said United States the One Hundred and Thirty-sixth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, Clerk.

UNITED STATES OF AMERICA, ss:

William H. Burden, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 13th day of April 1912, pursuant to an appeal filed in the Clerk's Office of the United States Circuit Court of Appeals for the Second Circuit, wherein Clarence S. Houghton as Receiver in Bankruptcy of the assets and effects of Abram L. Canfield Bankrupt is Appellant, and William H. Burden is Appellee to show cause if any there be, why the decree in said appeal mentioned shall not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Edward D. White, Chief Justice of the

United States, this 14th day of March in the year of our Lord One Thousand Nine Hundred and Twelve and of the Independence of the United States, the One Hundred and Thirty-sixth.

ALFRED C. COXE,
*Judge of the United States Circuit Court of
Appeals for the Second Circuit.*

Service of a copy of within citation is hereby admitted.
Dated N. Y. March 15, 1912.

BRUSH & CRAWFORD,
Attorney- for Wm. H. Burden, Claimant, Appellee.

[Endorsed:] United States Circuit Court of Appeals for the Second Circuit. In the matter of Abram L. Canfield, Bankrupt. Citation. Jacob J. Lazaro, Attorney for Appellant, Office & P. O. Address. 132 Nassau Street, New York City. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 15, 1912. William Parkin, Clerk.

Endorsed on cover: File No. 23,111. U. S. Circuit Court Appeals, 2d Circuit. Term No. 1035. Clarence S. Houghton, as receiver in bankruptcy of the assets and effects of Abram L. Canfield, bankrupt, appellant, vs. William H. Burden. Filed March 22d, 1912. File No. 23,111.

